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Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime
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Item 3 of the provisional agenda*
Consideration of the revised draft United Nations Convention against Transnational Organized Crime, with particular emphasis on articles 2, 2 *bis* (subparagraph (a) only), 4, 4 *bis*, 4 *ter*, 4 *quater*, 7, 7 *bis*, 7 *ter*, 17, 17 *bis*, 18, 18 *bis* and 18 *ter*

Revised draft United Nations Convention against Transnational Organized Crime[1]

Article 1
Statement of objectives

The purpose of this Convention is to promote cooperation to prevent and combat transnational organized crime more effectively.

* A/AC.254/26.

[1] In the present text, certain words, sentences or entire paragraphs have been placed in square brackets, which in some cases may indicate that the text in question has not been discussed or that delegations have expressly stated that the text requires further consideration. Except where indicated otherwise, the text of articles 1-3, 5 and 6 was approved by the Ad Hoc Committee at its seventh session (for details, see the report of the Ad Hoc Committee on its seventh session (A/AC.254/25)).

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Article 2
Scope of application[2, 3]

1. The Convention shall apply, except as otherwise provided herein, to the prevention, investigation and prosecution of:

(a) The offences established in accordance with articles 3, 4, 4 *ter* and 17 *bis*; and

(b) Serious offences involving an organized criminal group as defined in article 2 *bis*.

2. This Convention shall not apply, except as otherwise provided herein, when such an offence is committed within a single State, all members of the organized criminal group or, where no such group is involved, all alleged offenders are nationals of that State and are present in that State, and no other State has a basis under article 9, paragraphs 1 and 2, to exercise jurisdiction.

3. States Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.[4]

4. Nothing in this Convention entitles a State Party to undertake in the territory of another State the exercise of jurisdiction and performance of functions that are reserved exclusively for the authorities of that other State by its domestic law.

Article 2 bis
Use of terms

For the purposes of this Convention:

(a) "Organized criminal group" shall mean a structured group of three or more persons existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established pursuant to this Convention, in order to obtain, directly or indirectly, a financial or other material benefit;[5]

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[2] As decided by the Ad Hoc Committee at its seventh session, the order of articles 2 and 2 *bis* will be reversed in the final text.

[3] Paragraphs 1 and 2 of article 2 remain under review (see the report of the Ad Hoc Committee on its seventh session (A/AC.254/25). In a statement made prior to the adoption of the report of the Ad Hoc Committee on its seventh session, the Group of 77 and China expressed their preference for the draft text of paragraphs 1 and 2 of article 2, as contained in A/AC.254/4/Rev.6. That text is as follows:

"1. The Convention shall, except as otherwise provided herein, apply to the prevention, investigation and prosecution of serious crime involving a [transnational] organized criminal group as defined in article 2 *bis* and the offences established in articles 3 and 4.

"[2. This Convention shall not apply where the offence is committed within a single State, all members of the criminal group are nationals of that State and the victims are nationals or entities of that State, except that the provisions of articles concerning judicial assistance may, as appropriate, apply where the offence is serious and of an organized nature.]"

[4] At the seventh session, the delegation of Poland proposed that paragraphs 3 and 4 be placed in a separate article.

[5] In the discussion on the definition of "organized criminal group", the Ad Hoc Committee agreed that the term "financial or other material benefit" should be understood broadly to include, for example, personal or sexual gratification. The Ad Hoc Committee agreed that this understanding would be reflected in the *travaux préparatoires*. Some delegations, including those of Algeria, Egypt and Turkey, were of the view that the scope of the Convention should specifically include crimes committed in order to obtain, directly or indirectly, moral benefit. Other delegations were of the view that this concept was ambiguous. The delegation of Algeria proposed the addition of the words "or any other purpose".

(b) "Serious crime" shall mean conduct constituting a criminal offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty. For the purpose of implementing articles 3, 4, 4 *ter* and 17 *bis* of this Convention, a State Party shall consider this definition to refer to a criminal offence under its laws;[6]

(c) "Structured group" shall mean a group that is not randomly formed for the immediate commission of a crime and that does not need to have formally defined roles for its members, the continuity of its membership or a developed structure;

[*Old subparagraph (d) has been deleted.*]

(d) "Property" shall mean assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in, such property;

(e) "Proceeds of crime" shall mean any property derived from or obtained, directly or indirectly, through the commission of an offence;

(f) "Freezing or seizure" shall mean temporarily prohibiting the transfer, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court or a competent authority;

(g) "Confiscation", which includes forfeiture where applicable, shall mean the permanent deprivation of property by order of a court or other competent authority;

(h) "Predicate offence" shall mean any crime or offence as a result of which proceeds have been generated that may become the subject of an offence as defined in article 4 of this Convention;

(i) "Controlled delivery" shall mean the technique of allowing illicit or suspect consignments to pass out of, through or into the territory of one or more States, with the knowledge and under the supervision of their competent authorities, with a view to the investigation of an offence and the identification of persons involved in the commission of the offence.

[*Subparagraph (k) has been deleted.*][7]

Article 3

Criminalization of participation in an organized criminal group

1. Each State Party shall establish as criminal offences, when committed intentionally:

(a) Either or both of the following as criminal offences distinct from those involving the attempt or completion of the criminal activity:

[6] Subparagraph b (ii) of article 2 *bis* in the version contained in document A/AC.254/4/Rev.6 was deleted at the seventh session of the Ad Hoc Committee, with its substance to be reconsidered in connection with articles 10, paragraph 5, and 14, paragraph 6.

[7] At the seventh session of the Ad Hoc Committee, it was decided that the need to include a definition of "financial institution" in the present article should be reviewed in the context of the final formulation of article 4 *bis*.

(i) Agreeing with one or more other persons to commit a serious crime for any purpose relating directly or indirectly to the obtaining of a financial or other material benefit and, where required by domestic law, involving an act undertaken by one of the participants in furtherance of the agreement or involving an organized criminal group;

(ii) Conduct by a person who, with knowledge of either the aim and general criminal activity of an organized criminal group or its intention to commit the crimes in question, takes active part in:

a. Criminal activities of an organized criminal group as defined in article 2 *bis* of this Convention;

b. Other activities of the group in the knowledge that his or her participation will contribute to the achievement of the above-described criminal aim;

(b) Organizing, directing, aiding, abetting, facilitating or counselling the commission of serious crime involving an organized criminal group.

2. The knowledge, intent, aim, purpose or agreement referred to in paragraph 1 of this article may be inferred from objective factual circumstances.

3. A State whose laws require involvement of an organized criminal group for purposes of the offences established under paragraph 1 (a) (i) of this article shall ensure that its domestic laws cover all serious crimes involving organized criminal groups. Such States, as well as States whose laws require an act in furtherance of the agreement for purposes of the offences established under paragraph 1 (a) (i), shall so advise the Secretary-General of the United Nations at the time of their signature, ratification, acceptance or approval of or accession to this Convention.

Article 4[8]

Criminalization of the laundering of proceeds of crime

1. Each State Party shall adopt, in conformity with its constitutional principles, such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally:

(a) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising[9] the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;

[8] The text of this article was revised pursuant to discussion at the informal consultations held during the seventh session of the Ad Hoc Committee. Except where indicated otherwise, this revised text was provisionally approved by the informal consultations and recommended by the Chairmen of the informal consultations as the basis for the consideration and approval of the article by the Ad Hoc Committee at its eighth session.

[9] The *travaux préparatoires* will show that the words "concealing or disguising" should be understood to include preventing the discovery of the illicit origins of property.

(b) The concealment or disguise[10] of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;

and, subject to the basic concepts of its legal system:

(c) The acquisition, possession or use [disposal, administration, safe keeping, exchange, guaranteeing, investment, transfer or transport][11] of property, knowing, at the time of receipt, that such property is the proceeds of crime;

(d) Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.

[1 *bis*. States Parties shall ensure that their domestic laws on implementing this article apply to the proceeds of those crimes associated with organized criminal groups and also to the proceeds of other serious crimes.[12] States Parties shall, at the time of signature, ratification, acceptance or approval of or accession to the Convention, by declaration addressed to the Secretary-General of the United Nations, specify the scope of the crimes covered. States Parties shall periodically review their domestic laws on implementing this article to ensure that they apply to an appropriately broad range of offences and shall, if appropriate, subsequently revise their declaration.][13]

2. For the purposes of implementing or applying paragraph 1 of this article:

(a) It shall not matter whether the predicate offence was subject to the criminal jurisdiction of the State Party, provided that it is punishable under the domestic law of the State where the offence was committed;

(b) Knowledge, intent or purpose required as an element of an offence set forth in paragraph 1 may be inferred from objective factual circumstances;

(c) It may be provided that the offences set forth in paragraph 1 do not apply to the persons who committed the predicate offence.[14]

[*Old paragraphs 3 and 3 bis were deleted.*][15]

3. Nothing contained in this article shall affect the principle that the description of the offences to which it refers and of legal defences thereto is reserved to the domestic

[10] The note in the *travaux préparatoires* mentioned in footnote 9 will also apply to the words "concealment or disguise" contained in this subparagraph.

[11] Addition proposed by the delegation of India at the third session of the Ad Hoc Committee.

[12] An alternative formulation could be "crimes covered by this Convention".

[13] The text of paragraph 1 *bis* was revised by the delegation of the United States of America, pursuant to informal consultations with a number of interested delegations at the fifth session of the Ad Hoc Committee. Pursuant to further discussion at the informal consultations held during the seventh session of the Ad Hoc Committee, a proposal for the deletion of paragraph 1 *bis* and the amendment of paragraph 2 will be available for consideration by the Ad Hoc Committee at its eighth session.

[14] At the informal consultations held during the seventh session of the Ad Hoc Committee, Sweden undertook to reformulate this subparagraph in order to alleviate concerns about its clarity.

[15] The substance of paragraph 3 *bis* will be taken up in connection with article 15.

law of a State Party and that such offences shall be prosecuted and punished in conformity with that law.[16]

Article 4 bis[17]
Measures to combat money-laundering

1. Each State Party:

(a) Shall institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions and, where appropriate, other bodies particularly susceptible to money-laundering, within its competence, in order to deter and detect all forms of money-laundering, which regime shall emphasize requirements for customer identification, record-keeping and the reporting of suspicious transactions;[18]

(b) Shall, without prejudice to articles [14 and 19] of this Convention, ensure that administrative, regulatory, law enforcement and other authorities dedicated to combating money-laundering (including, where appropriate under domestic law, judicial authorities) have the ability to cooperate and exchange information at the national and international levels within the conditions prescribed by its domestic legislation and, to this end, shall consider the establishment of a financial intelligence unit to serve as a national centre for the collection, analysis and dissemination of information regarding potential money-laundering.

2. States Parties shall consider implementing feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders, subject to safeguards to ensure proper use of information and without impeding in any way the movement of legitimate capital. The measures may include a requirement that individuals and businesses report the cross-border transfer of substantial quantities of cash and appropriate negotiable instruments.

3. In establishing a domestic regulatory and supervisory regime under the terms of this article, and without prejudice to any other article of this Convention, States Parties shall [endeavour to] ensure that their implementation and application of this article are consistent with the recommendations contained in annex [...] to this Convention and shall, in addition where appropriate, take account of the relevant initiatives of regional and interregional organizations against money-laundering, such as initiatives of the Caribbean Financial Action Task Force, the Commonwealth, the Council of Europe, the Eastern and

[16] In order for this paragraph to be applicable to all offences to be established under this Convention, it should be moved to article 6, after being amended to read as follows: "Nothing contained in this Convention shall affect the principle that the description of the offences established under this Convention and of the applicable legal defences or other legal principles controlling the lawfulness of conduct is reserved to the law of a State Party and that such offences shall be prosecuted and punished in conformity with that law."

[17] The text of this article was revised pursuant to discussion at the informal consultations held during the seventh session of the Ad Hoc Committee. Except where indicated otherwise, this revised text was provisionally approved by the informal consultations and recommended by the Chairmen of the informal consultations as the basis for the consideration and approval of the article by the Ad Hoc Committee at its eighth session.

[18] Subparagraph (a) will remain under review, pending the final formulation of paragraph 3 of this article and in order to consider whether it would be appropriate to insert the phrase "in conformity with domestic law".

Southern African Anti-Money-Laundering Group, the European Union, the Financial Action Task Force on Money Laundering and the Organization of American States.[19]

4. States Parties shall endeavour to develop and promote global, regional, subregional and bilateral cooperation among judicial, law enforcement and financial regulatory authorities in order to combat money-laundering.

Article 4 ter[20]
Criminalization of corruption

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the following conduct, when committed intentionally [and involving an organized criminal group]:[21]

(a) The promise, offering or giving to a public official, directly or indirectly, of an undue advantage, for the official himself or another person or entity, in order that the official act or refrain from acting in the exercise of his official duties;

(b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or another person or entity, in order that the official act or refrain from acting in the exercise of his official duties.[22]

[19] The text of this paragraph was drafted by an informal working group set up by the Chairman and coordinated by the representative of South Africa at the informal consultations held during the seventh session of the Ad Hoc Committee. It is intended to serve as a basis for further consideration at the eighth session of the Ad Hoc Committee. The delegation of the Islamic Republic of Iran, supported by several other delegations, including that of China, proposed the following alternative text for this paragraph: "In establishing a domestic regulatory and supervisory regime in terms of this article and without prejudice to any other article of this Convention, States Parties may take into consideration the relevant initiatives by regional and interregional organizations against money-laundering, such as initiatives of the Caribbean Financial Action Task Force, the Commonwealth, the Council of Europe, the Eastern and Southern African Anti-Money-Laundering Group, the European Union, the Financial Action Task Force on Money Laundering and the Organization of American States." The delegation of Colombia indicated that if the recommendations were to be placed in an annex to the Convention, delegations should be given adequate opportunity to examine the annex in detail and agree on its content.

[20] The text of this article was revised pursuant to discussion at the informal consultations held during the seventh session of the Ad Hoc Committee. Except where indicated otherwise, this revised text was provisionally approved by the informal consultations and recommended by the Chairmen of the informal consultations as the basis for the consideration and approval of the article by the Ad Hoc Committee at its eighth session.

[21] At the informal consultations held during the seventh session of the Ad Hoc Committee, many delegations were in favour of deleting the bracketed phrase. Other delegations supported its retention. The matter will remain under review, pending the consideration of article 2 of the Convention.

At its sixth session, the Ad Hoc Committee agreed that the obligation under this article was not intended to include the actions of a person who acted under duress or undue influence.

[22] At the sixth session of the Ad Hoc Committee, one delegation was of the opinion that, in subparagraphs (a) and (b), the purpose for which a person could offer an undue advantage to a public official should be in order to obtain an undue advantage from the official concerned. At the informal consultations held during the seventh session of the Ad Hoc Committee, the delegation of China reiterated its support for this position. The Chairman requested the delegation of China to submit a concrete proposal at the eighth session of the Ad Hoc Committee that would reflect its concerns while meeting the concerns of all other delegations.

[2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences conduct referred to in paragraph 1 of this article involving a foreign public official or international civil servant.][23]

3. Each State Party shall also take such measures as may be necessary to establish as criminal offences the participation as an accomplice in an offence established in accordance with this article.

4. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences other forms of corruption, when committed intentionally [and involving an organized criminal group].[24]

5. For the purposes of paragraphs [...][25] of this article and article 4 *quater*, a public official shall be a public official or a person who provides a public service[26] as defined in the domestic law and as applied in the criminal law of the State in which the person in question performs that function.[27]

Article 4 quater[28]
Measures against corruption

1. In addition to the measures set forth in article 4 *ter* of this Convention, each State Party shall, to the extent appropriate and consistent with its legal system, adopt legislative, administrative or other effective measures to promote integrity and to prevent, detect and punish the corruption of public officials.

2. Each State Party shall take measures to ensure effective action by its authorities in the prevention, detection and punishment of the corruption of public officials, including by providing such authorities with adequate independence to deter the exertion of inappropriate influence on their actions.

[23] The text of this paragraph was submitted by the delegation of Belgium at the sixth session of the Ad Hoc Committee as a compromise proposal. The question of whether the paragraph will be retained may depend on the decision on whether a separate international legal instrument against corruption will be drafted. Several delegations strongly supported the deletion of this paragraph.

[24] At its sixth session, the Ad Hoc Committee deferred discussion of this paragraph until such time as a decision had been reached on the drafting of a separate legal instrument against corruption. At the informal consultations held during the seventh session of the Ad Hoc Committee, it was agreed to consider the text of this paragraph in connection with paragraph 2.

[25] Paragraphs pertaining to the criminalization of certain conduct involving domestic public officials.

[26] The *travaux préparatoires* should indicate that the concept of a person who provides a public service applies to particular legal systems and that the incorporation of this concept in the definition is intended to facilitate cooperation between parties with that concept in their legal systems.

[27] At the sixth session of the Ad Hoc Committee, the delegation of Colombia proposed the following formulation for this article in order to take into account concerns expressed about the clarity of the text: "For the purpose of paragraph [...] of this article, a public official shall be a person who provides a public service or performs a public function as defined in the domestic law of the State in which the person in question provides that service or performs that function."

[28] The text of this article was provisionally approved by the informal consultations held during the seventh session of the Ad Hoc Committee and recommended by the Chairmen of the informal consultations as the basis for the consideration and approval of the article by the Ad Hoc Committee at its eighth session.

Article 5
Liability of legal persons

1. Each State Party shall take such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in serious crimes involving an organized criminal group and for the offences established under articles 3, 4, 4 *ter* and 17 *bis* of this Convention.

2. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.

3. Such liability shall be incurred without prejudice to the criminal liability of the natural persons who have committed the offences.

4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.

Article 6
Prosecution, adjudication and sanctions

1. Each State Party shall make the commission of an offence established under this Convention liable to sanctions that take into account the gravity of that offence.

2. Each State Party shall endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences that are covered by this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.

3. In the case of offences established in accordance with articles 3, 4, 4 *ter* and 17 *bis* of this Convention, each State Party shall take appropriate measures, in accordance with its domestic law and with due regard to the rights of the defence, to seek to ensure that conditions imposed in connection with decisions on release pending trial or appeal take into consideration the need to ensure the presence of the defendant at subsequent criminal proceedings.

4. Each State Party shall ensure that its courts or other competent authorities bear in mind the grave nature of the offences that are covered by this Convention when considering the eventuality of early release or parole of persons convicted of such offences.

5. Each State Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence covered by this Convention and a longer period where the alleged offender has evaded the administration of justice.

Article 7[29]
Confiscation and seizure

1. States Parties shall adopt such measures as may be necessary to enable confiscation of:

(a) Proceeds of crime or property the value of which corresponds to that of such proceeds;

(b) Property, equipment or other instrumentalities used in or destined for use in offences covered by this Convention.

2. States Parties shall adopt such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation.

3. If proceeds of crime have been transformed or converted into other property, such property shall be liable to the measures referred to in this article instead of the proceeds.

4. If proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to seizure or freezing, be liable to confiscation up to the assessed value of the intermingled proceeds.

5. Income or other benefits derived from proceeds of crime, from property into which proceeds of crime have been transformed or converted or from property with which proceeds of crime have been intermingled shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds of crime.

6. For the purposes of this article and article 7 *bis*, each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or be seized. A State Party shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.

7. Each State Party may consider the possibility of requiring that an offender demonstrate the lawful origin of alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the principles of its domestic law and with the nature of the judicial and other proceedings.

8. The provisions of this article shall not be construed to prejudice the rights of bona fide third parties.

9. Nothing contained in this article shall affect the principle that the measures to which it refers shall be defined and implemented in accordance with and subject to the provisions of the domestic law of a State Party.

[29] The text of this article was provisionally approved by the informal consultations held during the seventh session of the Ad Hoc Committee and recommended by the Chairmen of the informal consultations as the basis for the consideration and approval of the article by the Ad Hoc Committee at its eighth session. It was noted that this article posed issues similar to those under consideration in relation to paragraph 1 *bis* of article 4.

Article 7 bis[30]
International cooperation for purposes of confiscation

1. A State Party that has received a request from another State Party having jurisdiction over an offence covered by this Convention for confiscation of proceeds of crime, property, instrumentalities or any other things referred to in paragraph 1 of article 7, situated in its territory, shall:

(a) Submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such order is granted, give effect to it; or

(b) Submit to its competent authorities, with a view to giving effect to it to the extent requested, an order of confiscation issued by a court in the requesting Party in accordance with paragraph 1 of article 7, in so far as it relates to proceeds of crime, property, instrumentalities or any other things referred to in paragraph 1 of article 7 situated in the territory of the requested Party.

2. Following a request made by another State Party having jurisdiction over an offence covered by this Convention, the requested State Party shall take measures to identify, trace and freeze or seize proceeds of crime, property, instrumentalities or any other things referred to in paragraph 1 of article 7 for the purpose of eventual confiscation to be ordered either by the requesting State Party or, pursuant to a request under paragraph 1 of this article, by the requested State Party.

3. The provisions of article 14 are applicable *mutatis mutandis*. In addition to the information specified in paragraph 10 of article 14, requests made pursuant to this article shall contain the following:

(a) In the case of a request pertaining to paragraph 1 (a) of this article, a description of the property to be confiscated and a statement of the facts relied upon by the requesting State Party sufficient to enable the requested State Party to seek the order under its domestic law,

(b) In the case of a request pertaining to paragraph 1 (b) of this article, a legally admissible copy of an order of confiscation issued by the requesting State Party upon which the request is based, a statement of the facts and information as to the extent to which the execution of the order is requested;

(c) In the case of a request pertaining to paragraph 2 of this article, a statement of the facts relied upon by the requesting State Party and a description of the actions requested.[31]

4. The decisions or actions provided for in paragraphs 1 and 2 of this article shall be taken by the requested State Party, in accordance with and subject to the provisions of its domestic law and its procedural rules or any bilateral or multilateral treaty, agreement or arrangement to which it may be bound in relation to the requesting State Party.

5. Each State Party shall furnish the Secretary-General of the United Nations with the text of any of its laws and regulations that give effect to this article and the text of any subsequent changes to such laws and regulations.

[30] The text of this article was provisionally approved by the informal consultations held during the seventh session of the Ad Hoc Committee and recommended by the Chairmen of the informal consultations as the basis for the consideration and approval of the article by the Ad Hoc Committee at its eighth session.

[31] The Ad Hoc Committee may wish to review this paragraph in the light of the final formulation of article 14.

6. If a State Party elects to make the taking of the measures referred to in paragraphs 1 and 2 of this article conditional on the existence of a relevant treaty, that Party shall consider this Convention the necessary and sufficient treaty basis.

7. States Parties shall seek to conclude bilateral and multilateral treaties, agreements or arrangements to enhance the effectiveness of international cooperation pursuant to this article.

8. Cooperation under this article may be refused by a State Party if the offence to which the request relates is not an offence covered by this Convention.

9. The provisions of this article shall not be construed to prejudice the rights of bona fide third parties.

Article 7 ter[32]
Disposal of confiscated assets

1. Proceeds of crime or property confiscated by a State Party pursuant to article 7 or paragraph 1 of article 7 *bis* shall be disposed of by that State Party in accordance with its domestic law and administrative procedures.

1 *bis*. When acting on the request made by another State Party in accordance with article 7 *bis* of this Convention, States Parties shall, to the extent permitted by domestic law and if so requested, give priority consideration to returning the confiscated assets to the requesting State Party so that it can give compensation to the victims of the crime or return such assets to their legitimate owners.[33]

2. When acting on the request of another State Party in accordance with articles 7 and 7 *bis*, a State Party may give special consideration to concluding agreements on:

(a) Contributing the value of such proceeds and property, or funds derived from the sale of such proceeds or property or a substantial part thereof to intergovernmental bodies specializing in the fight against organized crime;

(b) Sharing with other States Parties, on a regular or case-by-case basis, such proceeds or property, or funds derived from the sale of such proceeds or property, in accordance with its domestic law, administrative procedures or bilateral or multilateral agreements entered into for this purpose.

[*Article 8 was deleted.*]

[32] Except where indicated otherwise, the text of this article was provisionally approved by the informal consultations held during the seventh session of the Ad Hoc Committee and recommended by the Chairmen of the informal consultations as the basis for the consideration and approval of the article by the Ad Hoc Committee at its eighth session.

[33] This paragraph is under review, as it would require further refinement in order to meet all the concerns expressed at the informal consultations held during the seventh session of the Ad Hoc Committee. Consideration should also be given to the relation of this paragraph with articles 14, 18 and 18 *bis*. The Russian Federation made a proposal on confiscation (A/AC.254/5/Add.20), which is to be considered by the Ad Hoc Committee at its eighth session.

Article 9[34]
Jurisdiction

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences established in article(s) [...][35] of this Convention when:

(a) The offence is committed in the territory of that State; or

(b) The offence is committed on board a vessel that is flying the flag of that State or an aircraft that is registered under the laws of that State at the time the offence is committed.

2. A State Party may also establish its jurisdiction over any such offence when:

(a) The offence is committed against a national or a habitual resident of that State;[36]

(b) The offence is committed by a national or a habitual resident of that State; or

(c) The offence is committed outside its territory with a view to the commission, within its territory, of an offence established in accordance with articles [...] of this Convention; or

[(d) The offence has substantial effects in that State.][37]

[3. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences it has established in accordance with articles [...] of this Convention when the alleged offender is present in its territory and it does not extradite him or her to another State Party on the ground:

(a) That the offence has been committed in its territory or on board a vessel that was flying its flag or an aircraft that was registered under its law at the time the offence was committed; or

(b) That the offence has been committed by one of its nationals.][38]

[4. Each State Party may also take such measures as may be necessary to establish its jurisdiction over the offences it has established in accordance with articles [...] when the alleged offender is present in its territory and it does not extradite him or her.][39]

5. If the State exercising its jurisdiction under paragraph 1 or 2 of this article has been notified, or has otherwise learned, that one or more other States are conducting an investigation or carrying out criminal proceedings in respect of the same conduct, the

[34] The text of this article is based on a proposal submitted by Poland at the fourth session of the Ad Hoc Committee (see A/AC.254/5/Add.7).

[35] Reference would be made here to all the articles of the Convention containing an obligation to criminalize certain conduct.

[36] The delegation of China proposed the inclusion of the words "or that State" at the end of the sentence. Some other delegations suggested that the concept of an "offence committed against a State" was ambiguous and would in any case be covered by paragraph 6 of the present article.

[37] This subparagraph was included in the previous version of this article (see A/AC.254/4/Rev.3) and was retained at the request of some delegations.

[38] The text of this paragraph will need to be reviewed in the light of agreement on the formulation of article 10, on extradition.

[39] The text of this paragraph will need to be reviewed in the light of agreement on the formulation of article 10, on extradition.

competent authorities of those States shall, as appropriate, consult one another with a view to resolving the matter and coordinating their actions. [Until a solution has been reached, each State Party shall take care, as far as possible, not to jeopardize the investigations conducted by one or more States.][40]

6. This Convention does not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.[41]

7. The provisions of this article shall not affect the obligations with regard to the establishment of jurisdiction over offences pursuant to any other international treaty.

[40] It was agreed to review this sentence in the light of article 14, on mutual legal assistance, to be agreed upon. The Islamic Republic of Iran proposed that a compromise solution might be the following: "with a view to coordinating their investigative actions, so as not to lose time-sensitive evidence". Some delegations expressed their preference for the previous formulation of this paragraph, as contained in document A/AC.254/4/Rev.3.

[41] In the extensive discussion on this paragraph at the fourth session of the Ad Hoc Committee, several delegations noted that this paragraph could be understood to allow States Parties to apply their domestic laws to the territory of other States, for example, to carry out investigative measures abroad. Mexico, supported by several delegations, therefore proposed that the paragraph be clarified by adding the following sentence: "This Convention does not allow extraterritorial application of domestic legislation." Mexico also referred to the text of article 2, paragraph 4, of the present draft, which would prohibit States Parties from undertaking in the territory of another State the exercise of jurisdiction and the performance of functions reserved exclusively for the authorities of that other State by its domestic law.

Several other delegations pointed out that the paragraph was identical to article 4, paragraph 3, of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988. Its purpose was understood by those delegations to allow States Parties to establish jurisdiction, on which basis they could, for example, then proceed to request mutual legal assistance under article 14, which is in accordance with international law and practice. Those delegations suggested that the proposal of Mexico could itself be misunderstood as prohibiting, in contradiction to the provision in paragraph 2 of the present draft, States Parties from applying domestic law to offences committed abroad by, for example, their own nationals. It was also pointed out that article 2, paragraph 3, of the present draft emphasized the principles of sovereign equality, territorial integrity and non-intervention in the domestic affairs of other States and that those principles applied also to any exercise of jurisdiction. The Netherlands pointed out that the issue was explicitly addressed in the comments on article 4, paragraph 3, of the 1988 Convention contained in the commentary on that convention (United Nations publication, Sales No. E.98.XI.5).

Three proposals were made to address the concerns of the first group of countries.

Norway proposed amending the end of paragraph 6 to read "in accordance with its domestic law and with international law".

Finland proposed amending paragraph 6 to read:

"6. This Convention does not exclude the establishment of any criminal jurisdiction by a State Party in accordance with its domestic law."

Venezuela proposed that a cross-reference be inserted in paragraph 6 of article 9 to paragraphs 3 and 4 of article 2 of the present draft.

The Chairman noted that at the fourth session of the Ad Hoc Committee none of the proposals had sufficiently broad support to serve as the basis for consensus and that the issue should be kept under review.

Article 10
Extradition[42, 43, 44, 45]

1. This article shall apply to the offences covered by this Convention.[46]

2. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. The Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.[47]

3. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another Party with which it has no extradition treaty, it may[48] consider this Convention as the legal basis for extradition in respect of any offence to which this article applies. Parties that require detailed legislation in order to use this Convention as a legal basis for extradition shall consider enacting such legislation as may be necessary. [States Parties shall declare whether they intend to apply this paragraph.]

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[42] One delegation noted that this article did not sufficiently take into account the principle of *aut dedere aut judicare*, in particular in respect of the establishment of jurisdiction.

One delegation emphasized the importance of ensuring procedural safeguards and suggested that either a separate paragraph should deal with that issue or all relevant paragraphs should refer to "fundamental legal principles".

[43] The delegation of India had proposed (A/AC.254/L.43) the insertion of a new paragraph following paragraph 10 of this article, dealing with requests for extradition of the same person or persons. Following discussions on that proposal at the fifth session of the Ad Hoc Committee, India indicated that it would present at a subsequent session a new draft that would contain language that was less obligatory. Several delegations noted, however, that in their view the subject was adequately covered in paragraph 5.

[44] The delegation of Italy had proposed (A/AC.254/5/Add.8) the insertion of a new paragraph after paragraph 6 of this article to deal with the extradition of persons sentenced *in absentia*. Following the discussion at the fifth session of the Ad Hoc Committee, the delegation of Italy indicated that it would present a revised version of its proposal at a subsequent session of the Ad Hoc Committee.

[45] The delegation of Poland had proposed (A/AC.254/5/Add.7) the insertion of two new paragraphs at the end of this article to deal with jurisdictional issues and the exception of fiscal and political offences. Following the discussion at the fifth session of the Ad Hoc Committee, the delegation of Poland stated that it would take into account the observations and comments of delegations, especially regarding the deletion of references to political offences, and present a reformulated version of its proposal.

[46] At the fifth session of the Ad Hoc Committee, additional paragraphs proposed by the delegation of the Netherlands were supported by several delegations. Some other delegations suggested that the provisions of those paragraphs should be clarified. The delegation of the Netherlands stated that it would present reformulated versions of the paragraphs at a subsequent session. The paragraphs read as follows:

"1 *bis*. States Parties shall apply this article also if the request for extradition includes several serious offences, punishable under the laws of the requesting and the requested States Parties by deprivation of liberty for at least [...] years, although some of the offences are other than those envisaged in paragraph 1 of this article.

"1 *ter*. Notwithstanding paragraphs 1 and [1 *bis*] of this article, States Parties may apply this article also to serious offences punishable under the laws of the requesting and the requested States Parties by deprivation of liberty for a maximum period of at least [...] years or by a more severe penalty."

[47] One delegation noted the need for a paragraph on the application of the principle of double criminality to extradition cases.

[48] At the fifth session of the Ad Hoc Committee, some delegations stated their preference for the more mandatory wording "shall" over the more discretionary wording "may".

4. States Parties that do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.

5. Extradition shall be subject to the conditions provided for by the law of the requested State Party or by applicable extradition treaties, including the grounds upon which the requested Party may refuse extradition.

6. In considering requests pursuant to this article, the requested State may refuse to comply with such requests if it has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's [gender,][49] race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person's position for any of these reasons.[50]

7. States Parties shall endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.[51]

7 *bis*. States Parties shall consider surrendering to each other, subject to their domestic law, under speedy and simplified procedures, any person sought for the purpose of extradition, subject to the agreement of the requested State and the consent of that person, provided that the consent has been expressed voluntarily and in full awareness of the consequences. The requested State shall afford that person the right to legal counsel.[52]

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[49] Several delegations noted that it was their understanding that the term "gender" referred to men and women. The inclusion of this term as a possible basis for discrimination might therefore depend on its clarification.

[50] Some delegations suggested that a request for extradition could be refused if the offence in question was punishable by capital punishment in the requesting State. One delegation opposed such a provision and noted that paragraph 5, on the statutory conditions for extradition, would be sufficient.

UNHCR further requested that a paragraph be incorporated into the draft Convention that would prohibit extradition for the purposes of the Convention in cases of "political offences". UNHCR suggested the following wording: "Extradition shall not be granted if the offence in respect of which it is requested is regarded by the requested Party as a political offence, an offence related thereto or an ordinary criminal offence prosecuted for political reasons."

One delegation noted that it was prepared to allow such an exception, but not in the case of heinous offences.

At the fifth session of the Ad Hoc Committee, the delegation of China proposed the insertion of the following provision: "Before refusing extradition pursuant to this paragraph, the requested State Party shall consult with the requesting State Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation."

At the fifth session of the Ad Hoc Committee, the delegation of the United States stated that this provision should be formulated in such a way as not to create additional grounds for refusal that would apply to extradition treaties already in force that would permit extradition for the offence in question. The drafting would need to be considered further.

[51] Some delegations expressed their concern that this paragraph might lead to violations of the fundamental legal rights of the defendant.

[52] At the fifth session of the Ad Hoc Committee, this paragraph, originally proposed by the delegations of Australia, France and Sweden (A/AC.254/L.72), was inserted on the understanding that its drafting should be improved. For example, the delegation of Ireland proposed the inclusion of a reference to giving consent before a judicial authority, while several other delegations suggested that it should be made clear that consent would refer to the simplified procedures and not to the principle of extradition.

The delegation of China indicated that it had legal difficulties in accepting the inclusion of the paragraph. The delegation of the Syrian Arab Republic proposed its deletion.

8. Subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.

9. (a) The State Party in the territory of which the offender or the alleged offender is found shall, in cases where this [Convention] [article] applies, if it does not extradite that person [for the purpose of prosecution],[53] be obliged, at the request of the State Party seeking extradition, whether or not the offence was committed in its territory, to submit the case without undue delay to its competent authorities for the purpose of prosecution, [provided that it has established jurisdiction over such offence under article 9 of this Convention][54] [subject to the condition of double criminality,] through proceedings in accordance with the laws of that State;[55]

[(a *bis*) Notwithstanding subparagraph (a) of this paragraph, if a State Party considers the offence for which the extradition is sought to be not generally associated with the activities of an organized criminal group, the State Party shall not be required to take measures provided in that subparagraph;][56]

Option 1

[(a *ter*) The States Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution;][57]

Option 2

[(a *ter*) A State Party that submits a case for prosecution following the denial of extradition on grounds of nationality shall treat the investigation and prosecution with diligence, shall devote sufficient resources to conduct the matter effectively and shall coordinate the matter with the requesting State. It shall ensure that its mutual

[53] At the fifth session of the Ad Hoc Committee, three options were presented with regard to this point. In option 1, the phrase "solely on the basis of his or her nationality" would be inserted here. According to option 2, the phrase "on the grounds that the person whose extradition is sought is its own national or that a type of punishment that does not exist in the requested Party may be imposed on that person in the requesting Party" would be inserted here (A/AC.254/L.75). According to option 3, neither of the above phrases would be inserted here (A/AC.254/L.34 and A/AC.254/L.64).

[54] Proposal submitted by the delegation of China at the fourth session of the Ad Hoc Committee (A/AC.254/L.64).

[55] The text of paragraph 9 (a) was drafted by an informal working group established at the request of the Chairman of the Ad Hoc Committee at its fifth session and chaired by the delegation of Finland (A/AC.254/L.82). The redrafted text was not discussed in detail at the fifth session of the Ad Hoc Committee. Three options were presented with regard to this point. According to option 1, the following sentence would be inserted here (see A/AC.254/4/Rev.4, A/AC.254/L.72 and A/AC.254/L.75): "Those authorities shall take their decision in the same manner as in the case of any other offence of a grave nature under the law of that State." According to option 2, the following sentence would be inserted here (see A/AC.254/L.64): "Those authorities shall take their decision taking into account the serious nature of the offence." According to option 3, neither of the above sentences would be inserted here (see A/AC.254/L.34).

[56] Proposal submitted by the delegation of Japan at the fifth session of the Ad Hoc Committee (A/AC.254/L.75).

[57] Proposal submitted by the delegation of China at the fourth session of the Ad Hoc Committee (A/AC.254/L.64).

assistance, procedural and evidentiary laws enable effective action to be taken on the basis of evidence obtained from another State;][58]

(b) Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought and this State and the State seeking the extradition of the person agree with this option and other terms that they may deem appropriate, such a conditional extradition or surrender shall be sufficient to discharge the obligation set forth in subparagraph (a) of this paragraph.

10. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested Party shall, if its law so permits and if it is in conformity with the requirement of such law, upon application of the requesting Party, consider the enforcement of the sentence that has been imposed under the law of the requesting Party or the remainder thereof.

11. Any person regarding whom proceedings are being carried out in connection with any of the offences covered by this Convention shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the law of the State in the territory of which that person is present.

12. States Parties shall seek to conclude bilateral and multilateral agreements to carry out or to enhance the effectiveness of extradition.

Article 10 bis
Transfer of sentenced persons

States Parties may consider entering into bilateral or multilateral agreements, either ad hoc or general, on the transfer to their territory of persons sentenced to imprisonment or other forms of deprivation of liberty for offences to which this article applies, in order that they may complete their sentences there.

[*Articles 11, 12 and 13 were merged into new article 10.*]

Article 14
Mutual legal assistance[59]

1. States Parties shall afford one another the widest measure of mutual legal assistance [, within the conditions prescribed by the domestic legislation][60] in

[58] Proposal submitted by the delegation of the United States at the fourth session of the Ad Hoc Committee (A/AC.254/L.33).

[59] Several delegations proposed that the Model Treaty on Mutual Assistance in Criminal Matters (General Assembly resolution 45/117, annex) be used as the basis for the drafting of this article.

One delegation suggested that the corresponding provisions in the International Convention for the Suppression of Terrorist Bombings (General Assembly resolution 52/164, annex) should be taken as the basis for this article.

[60] Several delegations suggested that this phrase should be deleted, on the ground that the concern was adequately dealt with in paragraph 12. One delegation disagreed, noting that paragraph 12 related to a question of procedure.

investigations,[61] prosecutions and judicial proceedings in relation to the crimes or offences covered by this Convention, as provided for in article 2, paragraph 1.[62]

[1 *bis*. Without prejudice to the other limitations to the obligation to assist set forth in this article, mutual legal assistance also shall be afforded where the requesting State Party is investigating a serious crime and suspects the involvement of an organized criminal group.][63]

[1 *ter*. Each State Party shall, to the fullest extent possible under its relevant laws, treaties and arrangements, provide prompt and effective cooperation to another Party for proceedings brought by a State Party against a legal person under article 5 of this Convention.][64]

[1 *quater*. No State Party shall be entitled to undertake, in the territorial jurisdiction of any other State Party, the performance or discharge of any functions for which the jurisdiction or competence is reserved exclusively for the authorities of that other Party under its domestic laws or regulations.][65]

2. Mutual assistance to be afforded in accordance with this article may be requested for any of the following purposes:[66]

(a) Taking evidence or statements from persons;

(b) Effecting service of judicial documents;

(c) Executing searches, [freezing][67] and seizures;

[(c *bis*) The seizure, confiscation and surrender of property;][68]

(d) Examining objects and sites;

(e) Providing information, evidentiary items [and expert evaluations];[69]

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[61] Some delegations were of the view that, since the concept of "investigations" in paragraph 1 assumed the suspicion of involvement in crime, paragraph 1 *bis* was redundant.

[62] Some delegations preferred a more descriptive formulation of the scope of this paragraph.

[63] See footnote 61 above. One delegation noted that in view of the operational and financial resources to be expended by the requested State, a proper basis must exist before assistance commenced.

[64] This paragraph was inserted on the ground that, according to the laws of some States, legal persons as such could not be suspects or defendants in a criminal case and thus would not otherwise be covered by the present article. Delegations generally supported the idea contained in this paragraph, although some were of the view that it was already covered by paragraph 1. A number of delegations favoured the following alternative formulation:

"Mutual legal assistance shall be afforded with respect to investigations, prosecutions and judicial proceedings relating to offences for which a legal person may be held liable in the requesting State Party."

[65] This paragraph was proposed by Mexico at the fourth session of the Ad Hoc Committee (see A/AC.254/L.44). The Chairman indicated that it required further consideration.

[66] The delegation of Belgium suggested that this paragraph should be reformulated in order to ensure that it did not imply that the list of measures was exhaustive. Other delegations supported that suggestion.

[67] Proposal of the delegation of China.

[68] Proposal of the delegation of Mexico.

[69] The text in brackets is a proposal of the delegation of China.

(f) Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;[70]

(g) Identifying or tracing proceeds, property, instrumentalities or other things for evidentiary purposes;

(h) Facilitating the appearance of persons in the requesting State Party;

[(h *bis*) Locating or identifying persons or objects;][71]

(i) Any other type of assistance allowed by the law of the requested [or requesting][72] State Party.

2 *bis*. Without prejudice to national law, the competent authorities of a State Party may, without prior request, transmit information relating to criminal matters to a competent authority in another State where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by that authority pursuant to this Convention.

2 *ter*. The transmission of such information shall be without prejudice to inquiries and criminal proceedings in the State of the competent authorities providing the information. The competent authorities receiving the information shall comply with a request that said information remain confidential, even temporarily, or with restrictions on its use.[73]

3. The provisions of this article shall not affect the obligations under any other treaty, bilateral or multilateral, that governs or will govern, in whole or in part, mutual legal assistance.[74]

4. Paragraphs 6 to 21 of this article shall apply to requests made pursuant to this article if the States Parties in question are not bound by a treaty of mutual legal assistance. If those States Parties are bound by such a treaty, the corresponding provisions of that treaty shall apply unless the Parties agree to apply paragraphs 6 to 21 in lieu thereof.

5. States Parties shall not decline to render mutual legal assistance under this article on the ground of bank secrecy.[75]

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[70] Some delegations pointed out that the issues of money-laundering and bank secrecy were still under consideration. This subparagraph would therefore need to be reviewed in the light of agreement on article 4 *bis*.

[71] Proposal of the delegation of China.

[72] Proposal of the delegation of Finland.

[73] Paragraphs 2 *bis* and 2 *ter* were proposed by the delegation of Italy (see A/AC.254/5/Add.8) and received wide support. There were suggestions for refinement of the text, also in order to avoid overlap with the provisions of article 19, on law enforcement cooperation. According to some delegations, a possible model for a more streamlined text might be found in article 28 of the Council of Europe Criminal Law Convention on Corruption of 1999. One delegation suggested that the two paragraphs could be placed in a separate article entitled "Spontaneous communication of information".

[74] It was suggested at the informal preparatory meeting held in Buenos Aires in 1998 that the substance of this paragraph could be integrated into a more general article on the relationship of the Convention to other bilateral or multilateral treaties.

[75] This paragraph received broad support. However, some delegations expressed reservations about it.

6. States Parties may not decline to render mutual legal assistance under this article on the ground of absence of dual criminality, unless the assistance required involves the application of coercive measures.[76]

7. States Parties shall[77] [, where not contrary to fundamental legal principles,] adopt measures sufficient to enable a person in the custody of one State Party whose presence in another State Party is requested to give evidence or to assist in the investigations to be transferred if the person consents and if the competent authorities of both States agree.[78] Transfer under this paragraph shall not be for the purpose of standing trial. For the purposes of this paragraph:[79]

(a) The State to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise authorized by the State from which the person was transferred;

(b) The State to which the person is transferred shall return the person to the custody of the State from which the person was transferred [as soon as circumstances permit][80] or as otherwise agreed by the competent authorities of both States;

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[76] This paragraph received considerable support. However, several delegations expressed reservations on the ground that, in view of the broad scope of the Convention, the principle of dual criminality had to apply to mutual legal assistance. In an effort to find a compromise solution, the delegation of China proposed the formulation below. Several delegations supported the proposal of China.

> "The requested State Party shall be obliged to provide assistance only if the conduct in relation to which the request was made would constitute an offence under its domestic law. However, the requested State Party may, when it deems appropriate, provide assistance, to the extent it may decide at its discretion, irrespective of whether the conduct would constitute an offence under the laws of both the requesting and requested States Parties."

The United Kingdom proposed as a compromise formulation that the original paragraph be made applicable only to offences established by the Convention.

Some delegations noted that the connection between this paragraph and paragraph 16 should be reviewed.

The delegation of Singapore pointed out that the Commonwealth Scheme for Mutual Assistance in Criminal Matters of 1986 provided for dual criminality as a ground for refusal.

Some delegations pointed out that the term "coercive measures" might have a different meaning in different jurisdictions.

[77] Although some delegations deemed it important that this provision be mandatory, some other delegations proposed that "shall" be changed to "may". The delegation of Germany proposed the formulation "States shall endeavour to adopt". Some delegations noted that alternative formulations were contained in article 13 of the International Convention for the Suppression of Terrorist Bombings and article 93 of the Rome Statute of the International Criminal Court (A/CONF.183/9).

The delegation of Singapore proposed the formulation of article 13, paragraph 1, of the Model Treaty on Mutual Assistance in Criminal Matters, which reads as follows:

> "Upon the request of the requesting State, and if the requested State agrees and its law so permits, a person in custody in the latter State may, subject to his or her consent, be temporarily transferred to the requesting State to give evidence or to assist in the investigations."

One delegation noted the operational and security implications and suggested the possibility of alternative methods of obtaining the assistance or testimony of the person in custody, which would obviate the need for his or her physical transfer, such as the use of video link facilities.

[78] One delegation proposed that paragraph 20 immediately follow this paragraph.

[79] Some delegations proposed that this paragraph be made into a separate article. Belgium suggested that this paragraph should be supplemented with the following text: "If the transferred person flees, the State to which that person was transferred shall take every possible measure to ensure his or her apprehension."

[80] Several delegations proposed the deletion of the words "as soon as circumstances permit". The delegation of China proposed that the phrase be replaced with the words "as soon as the person has finished giving evidence or assisting in the investigations".

(c) The State to which the person is transferred shall not require the State from which the person was transferred to initiate extradition[81] proceedings for the return of the person;

(d) The person transferred shall receive credit for service of the sentence imposed in the State from which he or she was transferred for time served in the custody of the State to which he or she was transferred.[82]

8. States Parties shall designate a central authority or, when necessary, central authorities[83] that shall have the responsibility and power to execute requests for mutual legal assistance or to transmit them to the competent authorities for execution. Central authorities shall play an active role in ensuring the speedy execution of requests [, controlling quality and setting priorities].[84] The Secretary-General of the United Nations shall be notified of the authority or authorities designated for this purpose. Transmission of requests for mutual legal assistance and any communication related thereto shall be effected between the authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it through diplomatic channels and, in urgent circumstances, where the Parties agree, through the International Criminal Police Organization, if possible.[85]

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[81] The delegation of France proposed that the words "extradition proceedings" be replaced with the words "extradition or other proceedings".

[82] The delegation of Mexico proposed the insertion of the following subparagraph: "The authorities of the requested State Party may be present at proceedings conducted in the requesting State Party."

[83] Some delegations proposed the deletion of the words "or, when necessary, central authorities". Some other delegations were in favour of retaining this reference. Several delegations emphasized that a distinction was necessary between the authorities responsible for receiving or forwarding requests and those competent to execute requests. The delegation of Australia proposed to make this distinction by referring to "central offices" for authorities only receiving or forwarding requests and to "competent authority" for authorities executing requests.

The delegation of China proposed the deletion of the word "central" from this paragraph or the insertion of the following sentence after the first sentence of this paragraph: "States Parties may also designate other authorities for the same purpose for its special regions or territories that have separate systems of mutual legal assistance." The delegation of Canada referred to a proposal it had made on this matter in document A/AC.254/L.42 and indicated that it would continue consultations with other interested delegations with a view to formulating a text that would attract consensus.

[84] Some delegations proposed the deletion of this phrase in brackets, *inter alia*, on the ground that it could be seen to be in contradiction to the principle of the independence of the judiciary. One delegation recalled that the phrase had been taken from the amendments to the Model Treaty on Mutual Assistance in Criminal Matters.

[85] Some delegations were of the view that this paragraph, together with the corresponding provision on central authorities in article 10 (Extradition), should be placed in a separate article entitled "Transmission of requests for extradition and mutual assistance", to precede the articles on those issues. It was also proposed that such a separate article should more generally include provisions on channels of communication in connection with different forms of international cooperation in criminal matters.

9. Requests shall be made in writing or, where possible,[86] by any means capable of producing a written record in a language acceptable to the requested State Party, under conditions allowing that Party to establish authenticity.[87] The Secretary-General shall be notified of the language or languages acceptable to each Party. In urgent circumstances and where agreed by the States Parties, requests may be made orally, but shall be confirmed in writing forthwith.

10. A request for mutual legal assistance shall contain:

(a) The identity of the authority making the request;

(b) The subject matter and nature of the investigation, prosecution or proceeding to which the request relates and the name and the functions of the authority conducting the investigation prosecution or proceeding;

(c) A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;

(d) A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed;

(e) Where possible, the identity, location and nationality of any person concerned;

(f) The purpose for which the evidence, information or action is sought.[88]

11. The requested State Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.

12. A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to the domestic law of the requested Party and where possible, in accordance with the procedures specified in the request.[89]

13. Wherever possible and consistent with fundamental principles of domestic law, a State Party shall permit [encourage] testimony, statements or other forms of assistance to be given via video link or other modern means of communication and, subject to

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[86] It was agreed at the fourth session of the Ad Hoc Committee to include this clause in order to take into account the limited capabilities of many countries, especially developing countries, and in order to emphasize that modern means of communication were useful for the transmission of urgent requests. One delegation noted that the provision sought to balance the competing interests of the requesting State to obtain speedy execution of requests and of the requested State to ensure that action was only taken on the basis of credible and substantial information.

[87] The last phrase of this sentence was previously contained in a footnote and was moved into the body of the text pursuant to a proposal by the delegation of France that received wide support at the fourth session of the Ad Hoc Committee.

[88] At the fourth session of the Ad Hoc Committee, it was pointed out that the source of this paragraph was the 1988 Convention. The delegation of Colombia expressed its preference for a simplified version of the text.

[89] One delegation noted that this paragraph and paragraph 1 overlapped in part.

The delegation of Canada submitted a proposal for reformulation of the text of this paragraph (see A/AC.254/L.42), which received limited support. The delegation of Italy submitted a proposal for reformulation of this paragraph and the addition of another paragraph (see A/AC.254/5/Add.8). The Ad Hoc Committee was of the view that the ideas contained in that proposal merited further consideration. In particular, the second paragraph of that proposal might be considered further in conjunction with paragraph 19 of this article.

domestic law, shall ensure that perjury committed under such circumstances is a criminal offence.[90, 91]

14. The requesting State Party, if so requested by the requested State, shall not transmit or use information or evidence furnished by the requested Party for investigations, prosecutions or proceedings other than those stated in the request without the prior consent of the requested Party. Nothing in this paragraph shall preclude the requesting Party from, in its proceedings, disclosing information or evidence that is exculpatory to an accused person.[92]

15. The requesting State Party may require that the requested Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting Party.

16. Mutual legal assistance may be refused:

(a) If the request is not made in conformity with the provisions of this article;

(b) If the requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, *ordre public* or other essential interests;

(c) If the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or proceedings under their own jurisdiction;[93]

(d) If it would be contrary to the fundamental principles of the legal system of the requested State Party relating to mutual legal assistance for the request to be granted;

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[90] Several delegations expressed concern about the criminalization of perjury in this paragraph. The clause on domestic law was inserted to make such criminalization optional and thus meet those concerns. Nevertheless, several delegations expressed their preference for the deletion of the provision.

[91] The delegation of Japan suggested that the adoption of the necessary measures enabling testimony via video link should be optional. The delegation of Italy proposed the insertion of several new paragraphs after paragraph 13 (see A/AC.254/5/Add.8). The first paragraph of that proposal was favourably received at the fourth session of the Ad Hoc Committee as a potential alternative to paragraph 13. The first paragraph of the Italian proposal reads as follows:

> "Where an individual is in the territory of a State Party and has to be heard as a witness or expert by the judicial authorities of another State Party, the first State Party may, at the request of the other, permit the hearing to take place by video conference if the criminal proceedings for which the hearing was requested provide appropriate guarantees of conformity with its fundamental principles of law and where it is not possible or desirable for the individual in question to appear in person in the territory of the requesting State."

The rest of the proposal made by Italy was found to contain many useful concepts and ideas, but was deemed too lengthy and detailed for an international legal instrument. At the fifth session of the Ad Hoc Committee, Italy undertook to submit a redraft of its proposal at a subsequent session.

[92] This paragraph was redrafted at the fifth session of the Ad Hoc Committee on the basis of the summary of the Chairman. One delegation pointed out that the first sentence would require further consideration. One other delegation expressed concern that the second sentence left open to the requesting State Party the possibility of using the information or evidence for a purpose other than that noted in the request.

[93] Many delegations expressed the view that subparagraphs (c) and (d), contained in document A/AC.254/4/Rev.4, should be deleted.

(e) If the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's gender, race, religion, nationality or political opinions;[94]

(f) If the request relates to an offence that is considered by the requested State Party to be a political offence;

(g) If the request falls under subparagraph [1 *bis*] of this article and the requested State Party considers, based on the information provided by the requesting State Party, [that there is no basis for the suspicion of the involvement of an organized criminal group in the offence] [that the suspicion is unreasonable].[95]

17. For the purpose of cooperation under this article, the offences established in articles [...] of this Convention shall not be considered fiscal [or customs] offences, without prejudice to the constitutional limitations and the fundamental domestic law of the States Parties.[96]

18. Reasons shall be given for any refusal of mutual legal assistance.

[18 *bis*. If, within six months of the submission of its request, the requesting State Party has not received any information on action taken pursuant to that request, the requesting Party may petition the requested State Party in this regard. The requested Party shall inform the requesting Party about the reason for the lack of any communication regarding the request.][97]

19. Mutual legal assistance may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or proceeding.

19 *bis*. Before refusing a request pursuant to paragraph 16 of this article or postponing its execution pursuant to paragraph 19, the requested State Party shall consult with the requesting State Party to consider whether assistance may be granted subject to such terms and conditions as it deems necessary. If the requesting Party accepts assistance subject to those conditions, it shall comply with the conditions.

20. A witness, expert or other person who, at the request of the requesting State Party, consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting Party shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in that territory in respect of acts, omissions or convictions prior to his or her departure from the territory of the requested State Party. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days, or for any period agreed upon by the Parties, from the date on which he or she has been officially informed that his or her presence is no longer required by the judicial

[94] A number of delegations were of the view that subparagraphs (e) and (f), proposed by the delegation of the United States (A/AC.254/L.33), were already covered by the concept of "essential interests" in sub-paragraph (b). It was noted that the inclusion of these subparagraphs might imply that subparagraph (b) had a more limited scope than would otherwise be understood. Accordingly, a number of delegations considered that retaining these subparagraphs would require the inclusion of other express grounds for refusal, such as the possible imposition of the death penalty, double jeopardy and lapse of time.

[95] Subparagraph (g) was proposed by the delegation of Canada at the fifth session of the Ad Hoc Committee. It replaced subparagraph (e) as presented in document A/AC.254/4/Rev.4.

[96] At the fifth session of the Ad Hoc Committee, the delegations of Canada, Finland, the Netherlands and Switzerland undertook to submit a redrafted version of this paragraph.

[97] This paragraph was submitted by the delegation of France at the fifth session of the Ad Hoc Committee.

authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory of the requesting Party or, having left it, has returned of his or her own free will.

20 *bis*. The authorities of the requested State Party may request to be present in proceedings conducted in the territory of the requesting State Party.[98]

21. The ordinary costs of executing a request shall be borne by the requested State Party, unless otherwise agreed by the Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne.[99]

21 *bis*. The requested State Party:

(a) Shall provide copies of government records, documents or information in its possession that, under its laws, are available to the general public;

(b) May, at its discretion, provide in whole, in part or subject to such conditions as it deems appropriate, copies of any government records, documents or information in its possession that under its laws are not available to the general public.[100]

22. States Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to or enhance the provisions of this article.[101]

Article 14 bis
Joint investigations[102]

On a reciprocal basis, States Parties shall consider concluding bilateral or multilateral agreements or understandings whereby, in relation to matters that are the subject of criminal proceedings in one or more States, the judicial authorities concerned may, where necessary together with police authorities, after informing the central authority or authorities referred to in paragraph 8 of article 14, act together within joint investigative bodies. In the absence of such agreements or understandings, such joint investigations may be undertaken by agreement on a case-by-case basis.

[98] This paragraph was proposed by the delegation of Mexico. It was originally contained in document A/AC.254/L.44 and is presented here as further amended by the delegation of Mexico at the fifth session of the Ad Hoc Committee.

[99] One delegation noted that the wording of this paragraph required clarification. The delegation of Bangladesh suggested that the modalities for sharing ordinary costs of executing the request should be decided through mutual consultation between the requesting State Party and the requested State Party.

[100] This provision was redrafted following a preliminary discussion at the fifth session of the Ad Hoc Committee. It will require further examination.

[101] One delegation noted that the wording of this paragraph required clarification. Another delegation proposed that the paragraph be deleted.

[102] The placement of this paragraph in the present article, in connection with article 19, paragraph 2 (c), or in a separate article on joint investigative teams is to be considered. At the fifth session of the Ad Hoc Committee, the delegation of Italy undertook to consider the presentation of a possible reformulation of this paragraph at a subsequent session. The reformulation could include the following sentence: "The States Parties involved shall ensure that the sovereignty of the State Party in whose territory the investigation is to take place is fully respected."

Article 15
Special investigative techniques

1. Each State Party shall, within its possibilities and under the conditions prescribed by its domestic law, take the necessary measures to allow for the appropriate use of special investigative techniques, in particular controlled delivery, electronic or other forms of surveillance, and undercover operations, [by its competent authorities in its territory] for the purpose of effectively combating organized crime.[103]

2. For the purpose of investigating the crimes [covered by this Convention] [established in articles [...] of this Convention], States Parties are encouraged to make, when necessary, appropriate bilateral or multilateral arrangements for using such special investigative techniques in the context of cooperation at the international level. Such arrangements shall be agreed upon and implemented in full compliance with the principle of sovereign equality of States and shall be carried out strictly in accordance with the agreed terms of those arrangements.[104]

3. Decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned.

4. Decisions to use controlled delivery at the international level may [, with the consent of the States Parties concerned,][105] include methods such as intercepting and allowing the goods to continue intact or removed or replaced in whole or in part.

Article 16
Transfer of proceedings

States Parties shall give consideration to the possibility of transferring to one another proceedings for the criminal prosecution of an offence established in article(s) [...] of [*alternatively*: an offence covered by] this Convention in cases where such transfer is

[103] The text of this paragraph was proposed by an informal group convened at the request of the Chairman at the fifth session of the Ad Hoc Committee. One delegation noted that the proposal should be flexible, permit States to take the measures necessary for the use of such techniques and encourage States to implement them without placing them under an obligation to do so. One delegation was of the view that if this provision were to impose an obligation, the words "in particular" should be deleted, so that the obligation would not be left undefined or open-ended. Some delegations were of the view that the formulation could be more binding and/or compelling. One delegation suggested reverting to the original proposal (A/AC.254/4/Rev.4) and retaining the phrase "for the purpose of gathering evidence and taking legal action against persons involved".

At the second session of the Ad Hoc Committee, several delegations noted the need to define these concepts. It was also suggested by some delegations that, since the list of measures in this paragraph was not exhaustive and new investigative measures might be developed in response to the evolution of organized crime and of technology, the definitions might also be inserted into the *travaux préparatoires*.

[104] Proposal made at the fifth session of the Ad Hoc Committee by the delegations of China and Mexico, at the request of the Chairman, to consolidate paragraphs 2 and 2 *bis* previously contained in article 15 (A/AC.254/4/Rev.4).

Consideration should be given to eliminating specific references throughout the text to "sovereign equality", which duplicate the provision on this subject contained in article 2, paragraph 3, and apply generally to obligations under the Convention.

[105] The words in brackets, used in the corresponding article in the 1988 Convention (art. 11, para. 3), had been inadvertently deleted from the text.

considered to be in the interests of the proper administration of justice, in particular in cases where more jurisdictions are involved, with a view to concentrating the prosecution.

Article 17[106]
Establishment of criminal record

Each State Party may take such legislative or other measures as may be necessary to take into consideration, under such terms as and for the purpose that it deems appropriate, any previous conviction of an alleged offender in another country for the purpose of using such information in criminal proceedings relating to an offence covered by this Convention.

Article 17 bis[107]
Criminalization of obstruction of justice

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the following conduct, when committed intentionally [and involving an organized criminal group]:

(a) The use of physical force, threats, intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences covered by this Convention;

(b) The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences covered by this Convention. Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of public officials.

Article 18[108]
Protection of witnesses

1. Each State Party shall adopt appropriate measures within its means to provide effective protection from potential retaliation or intimidation for witnesses in its criminal proceedings who give testimony concerning the crimes covered by this Convention and, as appropriate, for their relatives and other persons close to them.

2. The measures envisaged in paragraph 1 of this article may include, among other things, without prejudice to the rights of the defendant, including the right to due process:

(a) Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them, and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons;

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[106] The text of this article was provisionally approved by the informal consultations held during the seventh session of the Ad Hoc Committee and recommended by the Chairmen of the informal consultations as the basis for the consideration and approval of the article by the Ad Hoc Committee at its eighth session.

[107] The text of this article was provisionally approved by the informal consultations held during the seventh session of the Ad Hoc Committee and recommended by the Chairmen of the informal consultations as the basis for the consideration and approval of the article by the Ad Hoc Committee at its eighth session.

[108] The text of this article was provisionally approved by the informal consultations held during the seventh session of the Ad Hoc Committee and recommended by the Chairmen of the informal consultations as the basis for the consideration and approval of the article by the Ad Hoc Committee at its eighth session.

(b) Providing evidentiary rules to permit witness testimony to be given in a manner that ensures the safety of the witness, such as permitting testimony to be given through the use of communications technology such as video links or other adequate means.

3. States Parties shall consider entering into arrangements with other States for the relocation of persons described in paragraph 1 of this article.

4. The provisions of this article shall apply also to victims in so far as they are witnesses.

Article 18 bis[109]

Assistance to and protection of victims

1. States Parties shall take appropriate measures within their means to provide assistance and protection to victims of offences covered by this Convention, in particular in cases of threat of retaliation or intimidation.

2. States Parties shall establish appropriate procedures to provide access to compensation and restitution for victims of offences covered by this Convention.

3. States Parties shall, subject to their domestic laws, enable views and concerns of victims to be presented and considered at appropriate stages of the criminal proceedings against the offenders in a manner not prejudicial to the rights of the defence.

Article 18 ter[110]

Measures to enhance cooperation with law enforcement authorities

1. States Parties shall take appropriate measures to encourage persons who participate or who have participated in organized criminal groups covered by this Convention:

(a) To supply information useful to competent authorities for investigative and evidentiary purposes on such matters as:

(i) The identity, nature, composition, structure or activities of organized criminal groups;

(ii) Links, including international links, with other organized criminal groups;[111]

(iii) Offences that organized criminal groups have committed or may commit;

(b) To provide factual, concrete help to competent authorities that may contribute to depriving organized criminal groups of their resources or of the proceeds of crime.

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[109] The text of this article was provisionally approved by the informal consultations held during the seventh session of the Ad Hoc Committee and recommended by the Chairmen of the informal consultations as the basis for the consideration and approval of the article by the Ad Hoc Committee at its eighth session.

[110] Except where indicated otherwise, the text of this article was provisionally approved by the informal consultations held during the seventh session of the Ad Hoc Committee and recommended by the Chairmen of the informal consultations as the basis for the consideration and approval of the article by the Ad Hoc Committee at its eighth session.

[111] At the informal consultations held during the seventh session of the Ad Hoc Committee, the delegation of Turkey expressed its preference for using the term "criminal organizations".

2. Each State Party shall give consideration to providing for the possibility of, in appropriate cases, mitigating punishment[112] of an accused person who provides substantial cooperation in the investigation or prosecution of any of the offences covered by this Convention.

2 *bis*. Each State Party shall give consideration to providing, in accordance with its fundamental legal principles, the possibility of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of [any of the offences established in articles [...] of this Convention] [an offence covered by this Convention].[113]

3. Protection of such persons shall be as provided for in article 18 of this Convention.

4. Where a person referred to in paragraph 1 of this article can provide substantial cooperation to the competent authorities of another State, the States Parties concerned may consider entering into arrangements, in accordance with domestic law, concerning the potential provision by the other State of the treatment described in paragraphs 2 and 2 *bis* of this article.

Article 19
Law enforcement cooperation[114]

1. States Parties shall consider entering into bilateral and multilateral agreements or arrangements on direct cooperation between their law enforcement agencies and, where such agreements or arrangements already exist, amending them with a view to giving effect to this Convention. In the absence of such agreements or arrangements between the States Parties concerned, the Parties may consider this Convention as the basis for mutual law enforcement cooperation in respect of any offence covered by this Convention. Whenever appropriate, States Parties shall make full use of agreements or arrangements, including international or regional organizations, to enhance the cooperation between their law enforcement agencies.

2. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences established in article(s) [...] of this Convention [*alternatively*: the offences covered by this Convention]. Each State Party shall, in particular, adopt effective measures:

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[112] The delegation of the United States indicated that this phrase might include not only prescribed but also de facto mitigation of punishment. That view was supported by many delegations.

[113] There was considerable discussion of this paragraph at the informal consultations held during the seventh session of the Ad Hoc Committee. Following the discussion and several drafting proposals, the Chairman asked interested delegations to reflect on the caveats already included in the paragraph, which were designed to allay juridical concerns and to take into account differences in legal systems, and to determine whether there was a need for an amended formulation for consideration at the eighth session of the Ad Hoc Committee. The concern expressed by the delegation of the Netherlands regarding the potential effects of this paragraph on international cooperation was met by including a reference to this paragraph in paragraph 4.

[114] This article, amended at the fifth session of the Ad Hoc Committee, would appear to cover the method relating to law enforcement cooperation referred to in the three draft protocols. It was suggested that it might not be necessary to have separate provisions on matters relating to law enforcement cooperation in each of the draft protocols.

(a) To enhance and, where necessary, to establish channels of communication between their competent authorities, agencies and services, including the designation, where appropriate, of [a central authority or authorities],[115] to facilitate the secure and rapid exchange of information concerning all aspects of the offences established in this Convention, including, if the States Parties concerned deem it appropriate, links with other criminal activities;[116]

(b) To cooperate with other States Parties in conducting inquiries, with respect to offences established in this Convention, concerning:

(i) The identity, whereabouts and activities of persons suspected of involvement in the offences established in this Convention;

(ii) The movement of proceeds or property derived from the commission of such offences;

(iii) The movement of instrumentalities[117] used or intended for use in the commission of such offences;[118]

(c) In appropriate cases and if not contrary to domestic law, to establish joint teams, taking into account the need to protect the security of persons and operations, in order to carry out the provisions of this paragraph. Officials of any State Party participating in such teams shall act as authorized by the appropriate[119] authorities of the Party in whose territory the operation is to take place; in all such cases, the States Parties involved shall ensure that the sovereignty of the Party in whose territory the operation is to take place is fully respected;[120]

(d) To provide, when appropriate, necessary items or quantities of substances for analytical or investigative purposes;

(e) To facilitate effective coordination between their competent agencies and services and to promote the exchange of personnel and other experts, including, subject

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[115] Many delegations were of the view that the reference to central authorities should be deleted or placed in brackets, as the concept more properly belonged under mutual legal assistance (art. 14). In this connection, it was noted that the provision of the 1988 Convention, on which article 19 was based, did not include a reference to central authorities. At the fifth session of the Ad Hoc Committee, the proposal to replace this phrase with "points of contact among such authorities, agencies and services" received widespread support. The delegation of Spain stated that the deletion of the reference to central authorities and its replacement with reference to the establishment of contact points needed further study by the Ad Hoc Committee.

[116] At the fifth session of the Ad Hoc Committee, the delegations of the Islamic Republic of Iran and Pakistan suggested either deleting the reference to "links with other criminal activities" or limiting the reference to "other organized criminal activities".

[117] At the fifth session of the Ad Hoc Committee, the delegation of the Syrian Arab Republic questioned the use of the term "instrumentalities" in this connection.

[118] At the fifth session of the Ad Hoc Committee, the delegations of the Comoros, Mali and Senegal questioned the accuracy of the French version of this paragraph.

[119] One delegation proposed the insertion of the word "central". Another delegation opposed it and noted the need to take into consideration the administrative structure of the State when deciding which authority should be charged with the responsibility referred to in the present paragraph.

[120] One delegation expressed concern regarding this paragraph. Some other delegations emphasized in this connection the importance of respecting the sovereignty and territorial integrity of States.

to bilateral arrangements or agreements between the States Parties concerned, the posting of liaison officers;[121]

(f) To exchange information with other States Parties on specific means and methods used by organized criminal groups, including, where applicable, routes and conveyances and the use of false identities, altered or false documents or other means of concealing their activities.

3. States Parties shall cooperate closely in preventing and controlling the offences established in article(s) [...] of this Convention [*alternatively*: the offences covered by this Convention]. In particular, they shall, in accordance with their domestic laws or pursuant to bilateral or multilateral agreements or arrangements:[122]

(a) Take all appropriate measures to prevent preparation in their respective territories for the commission of those offences within or outside their territories;

(b) Exchange information in accordance with their national law and coordinate administrative and other measures taken as appropriate to prevent the commission of offences established in article(s) [...] of this Convention [*alternatively*: of offences covered by this Convention].[123]

[4. States Parties shall:[124]

(a) Designate knowledgeable law enforcement personnel to be available [on a 24-hour basis][125] to respond to transnational organized crime committed through the use of computers, telecommunications networks and other forms of modern technology;[126] and

(b) Review their domestic legislation to ensure that such abuses are adequately addressed.][127]

Article 20
Collection and exchange of information on the nature of organized crime

1. States Parties shall consider developing and sharing analytical expertise concerning organized criminal activities with each other and through interregional and regional organizations, including the International Criminal Police Organization. For this

[121] One delegation suggested that the concept and role of "liaison officers" should be clarified. Another State proposed adding to the end of this paragraph the words "as well as, where appropriate, the extension and expansion of the competence of existing liaison officers".

[122] Two delegations proposed that paragraph 3 be transferred to article 22 (Prevention at the national level).

[123] At the fifth session of the Ad Hoc Committee, discussion on this paragraph was deferred until article 22 could be considered.

At the second session of the Ad Hoc Committee, one delegation noted the need to ensure the confidentiality of any information exchanged on the basis of this subparagraph.

[124] Some delegations stressed the need for further consideration of this paragraph and one delegation proposed its deletion on the grounds that it would impose significant financial obligations on States Parties. It was suggested that the paragraph should be reformulated so that the measures envisaged would be discretionary.

[125] One delegation proposed the deletion of the words appearing in brackets.

[126] One delegation noted that these measures should also be considered in connection with other types of offences.

[127] At the fifth session of the Ad Hoc Committee, it was indicated that this paragraph required substantial reformulation.

purpose, common definitions, standards and methodologies should be developed and applied as appropriate.

2. Each State Party shall consider analysing, in consultation with the scientific and academic communities, trends in organized crime in its territory, the circumstances in which organized crime operates, as well as the professional groups and technologies involved.

3. Each State Party shall consider monitoring its policies and actual measures to combat organized crime and making assessments of their effectiveness and efficiency.

Article 21
Training and technical assistance

1. Each State Party shall, to the extent necessary, initiate, develop or improve a specific training programme for its law enforcement personnel, including prosecutors, investigating magistrates and customs personnel, and other personnel charged with the prevention and control of the offences covered by this Convention. Such programmes may include secondments and exchanges. Such programmes shall deal, in particular, with the following:

(a) Methods used in the prevention, detection and control of the offences covered by this Convention;

(b) Routes and techniques used by persons suspected of involvement in offences covered by this Convention, including in transit States, and appropriate countermeasures;

(c) Monitoring of import and export of contraband;

(d) Detection and monitoring of the movements of proceeds and property derived from offences covered by this Convention, instrumentalities used in the commission of such offences and methods used for the transfer, concealment or disguise of such proceeds, property and instrumentalities, and other methods used in combating money-laundering and other financial crimes;

(e) Collection of evidence;

(f) Control techniques in free trade zones and free ports;

(g) Modern law enforcement equipment and techniques, including electronic surveillance, controlled deliveries and undercover operations;

(h) Methods used in combating transnational organized crime committed through the use of computers, telecommunications networks or other forms of modern technology; and

(i) Methods used in the protection of victims and witnesses.

2. States Parties shall assist one another in planning and implementing research and training programmes designed to share expertise in the areas referred to in paragraph 1 of this article and, to this end, shall also, when appropriate, use regional and international conferences and seminars to promote cooperation and to stimulate discussion on problems of mutual concern, including the special problems and needs of transit States.

3. States Parties shall promote training and technical assistance that will facilitate extradition and mutual legal assistance. Such training and technical assistance may include language training, secondments and exchanges between personnel in central authorities or agencies with relevant responsibilities.

4. States Parties may conclude bilateral or multilateral agreements on material and logistical assistance, taking into consideration the financial arrangements necessary for the means of international cooperation provided for by the present Convention to be effective and for the prevention and control of transnational organized crime.

5. In the case of existing bilateral and multilateral agreements, States Parties shall strengthen, to the extent necessary, efforts to maximize operational and training activities within interregional and regional organizations, including, *inter alia*, the International Criminal Police Organization, and within other relevant bilateral and multilateral agreements or arrangements.

Article 21 bis
Other measures: implementation of the Convention through economic development and technical assistance

1. States Parties shall take measures conducive to the optimal implementation of this Convention to the extent possible, through international cooperation, taking into account the negative effects of organized crime on sustainable development.

2. States Parties shall make concrete efforts to the extent of their capacities and in coordination with the international agencies:

(a) To enhance their cooperation at various levels with developing countries, with a view to strengthening the capacity of the latter to combat, eradicate and prevent transnational organized crime;

(b) To provide more constructive opportunities for the sustainable economic development of developing countries. This will require financial and material assistance to prepare developing countries to fight transnational organized crime effectively and to help them implement the Convention successfully;

(c) To establish a special United Nations fund for technical cooperation in order to provide technical assistance to developing countries and countries with economies in transition to assist them in meeting their needs for the implementation of this Convention. States Parties shall endeavour to make adequate and regular voluntary contributions to the fund. States Parties shall also consider, in accordance with their domestic legislation and the provisions of this Convention, contributing to the fund a percentage of the money or of the corresponding value of illicit assets confiscated in accordance with the provisions of this Convention;

(d) To encourage and persuade other States Parties and financial institutions to join them in the transfer of technology and increased technical cooperation by providing more training programmes and modern equipment to developing countries in order to assist them in achieving the objectives of this Convention.

3. These measures shall be without prejudice to existing foreign investment commitments or to other financial cooperation arrangements at the bilateral, regional or international level.[128]

[128] The text of this article was presented at the sixth session of the Ad Hoc Committee by the delegation of India on behalf of the Group of 77 (A/AC.254/L.108). During the preliminary discussion that ensued, there was support for many of the principles embodied in the article. Several proposals were made regarding the best way of articulating those principles, including considering the matter in connection with articles 21 and 23.

Article 22
Prevention

1. States Parties shall endeavour to develop and evaluate national projects and to establish and promote best practices and policies aimed at the prevention of transnational organized crime.

2. States Parties shall endeavour, in accordance with their constitutional principles, to reduce existing or future opportunities for organized criminal groups to participate in legal markets while acquiring proceeds of criminal offences covered by this Convention, through appropriate legislative, administrative or other measures. These measures should focus on:

(a) The strengthening of cooperation between law enforcement agencies or public prosecutors and relevant private entities, including industry;

(b) The promotion of the development of standards and procedures designed to safeguard the integrity of public and relevant private entities, as well as codes of conduct for relevant professions, in particular lawyers, notaries public, tax consultants and accountants;

(c) The prevention of the misuse by organized criminal groups of tender procedures conducted by public authorities and of subsidies and licences granted by public authorities for commercial activity;

(d) The prevention of the misuse of legal persons by organized criminal groups; such measures could include:

(i) The establishment of public records on legal persons and natural persons involved in the establishment, management and funding of legal persons;

(ii) The introduction of the possibility to disqualify by court order or any appropriate means for a reasonable period of time persons convicted of criminal offences covered by this Convention from acting as directors of legal persons incorporated in their jurisdiction;

(iii) The establishment of national records of persons disqualified from acting as directors of legal persons; and

(iv) The exchange of information contained in the records referred to in subparagraphs (d) (i) and (iii) of this paragraph with competent authorities of other States Parties.

3. States Parties shall endeavour to promote the reintegration into society of persons convicted of criminal offences covered by this Convention.

4. Each State Party shall endeavour to evaluate periodically existing relevant legal instruments and administrative practices with a view to detecting their vulnerability to abuse by organized criminal groups.

5. States Parties shall endeavour to promote public awareness regarding the existence, causes and gravity of and the threat posed by transnational organized crime. Information may be disseminated where appropriate through the mass media and shall include measures to promote public participation in preventing and combating such crime.

6. Each State Party shall inform the Secretary-General of the name and address of the authority or authorities[129] that can assist other States Parties in developing measures to prevent transnational organized crime.

7. States Parties shall, as appropriate, collaborate with each other and relevant international organizations in promoting and developing the measures referred to in this article, including by participating in international projects aimed at the prevention of transnational organized crime.[130]

[*Article 22 bis was deleted.*]

Article 22 ter
Communication from States Parties

Each State Party shall provide the Conference of the Parties to the Convention with information on its policies and legislative and administrative measures to implement the Convention, as required by the Conference of the Parties.[131]

Article 23
Conference of the Parties to the Convention

1. A Conference of the Parties to the Convention is hereby established to improve the capacity of States Parties to combat transnational organized crime and to promote and monitor the implementation of the Convention.

2. The Conference of the Parties shall convene not later than one year following the entry into force of the Convention. The first task of the Conference will be to agree upon and adopt rules of procedure and rules governing the activities described in paragraphs 3 and 4 of this article (including rules concerning payment of expenses incurred in carrying out those activities).

3. The Conference of the Parties shall agree upon mechanisms for accomplishing the objectives mentioned in paragraph 1 of this article, including:[132]

(a) Facilitating activities by States Parties under articles 21 and 22 of this Convention, including by mobilizing voluntary contributions;

(b) Facilitating the exchange of information among States Parties on patterns and trends in transnational organized crime and on successful practices for combating it;

(c) Cooperating with relevant international and non-governmental organizations;

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[129] At the sixth session of the Ad Hoc Committee, the delegation of Spain suggested that reference should be to a central authority or authorities.

[130] At the sixth session of the Ad Hoc Committee, the delegation of Colombia proposed that the following sentence be added at the end of paragraph 7: "They shall also, as far as their means allow, allocate resources for the alleviation of the circumstances that render socially marginalized groups vulnerable to the action of transnational organized crime."

[131] The *travaux préparatoires* should show that the Conference of the Parties should take into account the need to foresee some regularity in the provision of the information.

[132] The delegation of Japan expressed concern about the confidentiality of some information foreseen under this paragraph and proposed inserting the following words: "taking into account the need for confidentiality of some information arising from the nature of the fight against transnational organized crime". Other delegations were of the view that issues such as this could be left to the Conference of the Parties, as they were too detailed to be dealt with in the Convention.

(d) Examining periodically the implementation of the Convention by States Parties;

(e) Making recommendations to improve the Convention and its implementation.

[*Subparagraph (f) was deleted.*]

4. For the purpose of paragraphs 3 (d) and (e) of this article, the Conference of the Parties shall acquire the necessary knowledge of the measures taken by States Parties in implementing this Convention and the difficulties encountered by them in doing so through the information provided by the States Parties and through the promotion of, *inter alia*, [meetings between national authorities[133] and expert consultative teams] [to be established][134] in accordance with the rules established by the Conference pursuant to paragraph 2 of this article.[135, 136]

[*Article 23 bis*
Secretariat[137]

1. The Secretary-General shall convene the first session of the Conference of the Parties to the Convention and shall designate the Centre for International Crime Prevention of the Secretariat of the United Nations to serve as the secretariat for and at the direction of the Conference.

2. The secretariat shall:

(a) Assist the Conference of the Parties in carrying out the activities described in article 23 of this Convention and make arrangements for and provide the necessary services for the sessions of the Conference;

(b) Upon request, assist States Parties in providing information to the Conference of the Parties as envisaged in article 22 *ter*; and

(c) Ensure the necessary coordination with the secretariats of other relevant international organizations.][138]

[133] The delegation of Spain proposed that reference be made to central national authorities.

[134] Proposal made by the delegation of the Islamic Republic of Iran in an effort to achieve consensus.

[135] During the discussions in the working group, concerns were expressed about how the Conference of the Parties would actually function. It was, therefore, deemed appropriate to begin identifying issues that would be covered by the rules that the Conference would agree upon and adopt in accordance with paragraph 2.

[136] This article requires further consideration.

[137] This article envisages the tasks of the secretariat in relation to the work of the Conference of the Parties. After the Ad Hoc Committee has discussed the question of technical assistance, it will be necessary to consider whether language addressing the role of the secretariat in relation to such assistance needs to be added to this article.

[138] The formulation of this article requires further consideration.

Article 23 ter
Implementation of the Convention

1. Each State Party shall take the necessary measures, including legislative and administrative measures, in accordance with the fundamental principles of its domestic legal system, to ensure the implementation of its obligations under this Convention.[139]

2. Each State Party may adopt more strict or severe measures than those provided for by this Convention for the prevention and combat of transnational organized crime.

Article 24
Relation with other conventions

1. This Convention does not affect the rights and undertakings derived from international multilateral conventions concerning [special matters].[140]

2. States Parties to the Convention may conclude bilateral or multilateral agreements with one another on the matters dealt with in this Convention, for purposes of supplementing or strengthening its provisions or facilitating the application of the principles embodied in it.

3. If two or more Parties have already concluded an agreement or treaty in respect of a subject that is dealt with in this Convention or otherwise have established their relations in respect to that subject, they shall be entitled to apply that agreement or treaty or to regulate those relations accordingly, in lieu of the present Convention, [if it facilitates international cooperation].[141]

4. States Parties may conclude bilateral or multilateral agreements or arrangements for the application of one or more provisions of this Convention to other forms of criminal behaviour.

[5. No provision of this Convention shall be construed as preventing the States Parties from engaging in mutual cooperation within the framework of other international agreements, whether bilateral or multilateral, currently in force or concluded in the future, or pursuant to any other applicable arrangement or practice.][142]

[139] The formulation of this paragraph and in particular the provision concerning the "fundamental principles of its domestic legal system", requires further consideration, including also in order to ensure consistency with other articles of the Convention where such a provision is made and where the intent is the same.

[140] Delegations considered that this term was vague and should be replaced with a more appropriate one.

[141] At the sixth session of the Ad Hoc Committee, many delegations felt that this phrase implied a value judgement, but that the text was silent as to who should make that judgement. It was therefore proposed that a better formulation be found.

[142] This paragraph appeared as option 3 of article 24 in the text contained in document A/AC.254/4/Rev.5. It was retained at the request of the delegation of the United States for further consideration. The delegation of Japan requested that the text of option 1 of article 24 of the text contained in document A/AC.254/4/Rev.5 also be retained. Option 1 provided as follows: "This Convention shall not prejudice the application of other United Nations conventions on criminal matters."

Article 25
Settlement of disputes[143]

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention and its Protocols that cannot be settled through negotiation within a reasonable time [ninety days] shall, at the request of one of those Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State Party may, at the time of [signature,] ratification [, acceptance] or [approval] of this Convention, declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by paragraph 1 of this article with respect to any State Party that has made such a reservation.[144]

3. Any State Party that has made a reservation[145] in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.[146]

Article 26
Signature, ratification, acceptance, approval, accession and reservations

1. This Convention shall be open to all States for signature from [...] to [...] and thereafter at United Nations Headquarters in New York until [...].

2. The present Convention is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations.

Option 1

[3. No reservations may be made in respect of any provision of this Convention.]

[143] Some delegations proposed that article 32 of the 1988 Convention would be a more appropriate model for this paragraph, in that it referred not simply to negotiation and arbitration, but in greater detail to "negotiation, enquiry, mediation, conciliation, arbitration, recourse to regional bodies, judicial process or other peaceful means of their [the Parties'] own choice". Other delegations, however, essentially supported the present formulation, since it was based on the International Convention for the Suppression of Terrorist Bombings of 1997, which was more recent than the 1988 Convention.

[144] One delegation noted that the issue of a declaration would apply only to cases involving the compulsory settlement of disputes. Some delegations proposed that paragraphs 2 and 3 of article 25, together with the appropriate paragraphs from article 26, should be placed in a separate article on reservations. Other delegations, however, noted that reservations in respect of the resolution of conflicts were an issue that should be kept in article 25, separate from the issue of reservations in general.

[145] One delegation proposed that the word "reservation" be replaced with the word "declaration".

[146] At its sixth session, on the recommendation of the Chairman, the Ad Hoc Committee requested the Secretariat to propose a formulation for this article that would be consistent with the wording of other United Nations conventions.

Option 2

[3. Reservations shall be subject to the provisions of the Vienna Convention on the Law of Treaties of 1969.][147]

[4. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States Parties at the time of ratification, acceptance, approval or accession.]

[5. Reservations may be withdrawn at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall then inform all States. Such notification shall take effect on the date on which it is received by the Secretary-General.]

6. This Convention is subject to accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

[*Article 26 bis*
Relation with Protocols[148]

1. This Convention may be supplemented by one or more Protocols.

2. In order to become a Party to a Protocol, a State must also be a Party to the Convention.

3. A State Party to the Convention is not bound by a Protocol unless it becomes a Party to the Protocol in accordance with the provisions thereof.

4. Any Protocol by which a State Party is bound shall, for that State Party, form an integral part of this Convention.]

Article 27
Entry into force

1. The present Convention shall enter into force on the thirtieth day following the date of deposit with the Secretary-General of the United Nations of the [...][149] instrument of ratification, acceptance, approval or accession.

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[147] At the sixth session of the Ad Hoc Committee, there was discussion as to whether reservations would be permitted. It was agreed that the issue of reservations could not be settled until the contents of the Convention had been decided upon. The Ad Hoc Committee agreed to place the two options in the text in order to facilitate further consideration of this issue. Some delegations proposed that the possibility of a third option, according to which reservations would not be permitted for certain articles of the Convention, should be kept in mind. In the text of the draft Convention contained in document A/AC.254/4/Rev.5, a provision that was relevant to this possible option was included as paragraph 4, namely: "A reservation incompatible with the object and purpose of the present Convention shall not be permitted."

[148] At the sixth session of the Ad Hoc Committee there was considerable discussion regarding whether a provision governing the relationship between the Convention and the Protocols should be included in the text of the Convention or only in the text of each of the Protocols. The Ad Hoc Committee was of the view that decisions on this matter and on the formulation of the text would be made once the substantive provisions of the Convention and the Protocols had been finalized. The Ad Hoc Committee requested the Secretariat to provide it with clauses dealing with the same subject in other international instruments.

[149] Some delegations proposed 20 as the appropriate number of ratifications, since this would make it possible for the Convention to enter into force in a relatively brief period. Other delegations proposed that the number of ratifications required should be higher (for example, 40-60) in order to emphasize the global nature of the Convention. One delegation noted that a low number of ratifications would be appropriate should it be possible to make reservations to the Convention.

2. For each State Party ratifying, accepting, approving or acceding to the Convention after the deposit of the [...] instrument of such action, the Convention shall enter into force on the thirtieth day after the deposit by such State of that relevant instrument.

Article 28[150]
Amendment

1. A State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties.

3. When an amendment enters into force, it shall be binding on those States Parties which have accepted it, other States Parties still being bound by the provisions of the present Convention and any earlier amendments that they have accepted.

Article 29
Denunciation

A State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

Article 30
Languages and depositary

1. The Secretary-General of the United Nations is designated depositary of the present Convention.

2. The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.[151]

IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.

[150] This article should be amended to be brought in line with article 23.

[151] At its sixth session, the Ad Hoc Committee requested the Secretariat to propose language for articles 28-30 that would be in line with standard treaty practice.

Attachment

1. At its second session, the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime accepted a compromise proposal by its Chairman that a list of offences, which could be either indicative or exhaustive, could be included either in an annex to the Convention or in the *travaux préparatoires*. This list would, however, need to be supplemented with proposals from States. (For details see the report of the Ad Hoc Committee on its second session (A/AC.254/11).)

2. The following list was taken from former paragraph 3 of article 2 (see A/AC.254/4/Rev.1):

"[3. For the purposes of the application of paragraph 1 above, 'serious crime' shall be deemed to include, among others, acts such as the following:

"(a) Illicit traffic in narcotic drugs or psychotropic substances and money-laundering, as defined in the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988;[a]

"(b) Traffic in persons, as defined in the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others of 1949;[b]

"(c) Counterfeiting currency, as defined in the International Convention for the Suppression of Counterfeiting Currency of 1929;[c]

"(d) Illicit traffic in or stealing of cultural objects, as defined by the United Nations Educational, Scientific and Cultural Organization Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property of 1970,[d] and the International Institute for the Unification of Private Law Convention on Stolen or Illegally Exported Cultural Objects of 1995;

"(e) Stealing of nuclear material, its misuse or threats to misuse or harm the public, as defined by the Convention on the Physical Protection of Nuclear Material of 1980;[e]

"(f) Acts contained in the United Nations conventions against terrorism;[f]

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[a] *Official Records of the United Nations Conference for the Adoption of a Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Vienna, 25-November-20 December*, 1988, vol. I (United Nations publication, Sales No. E.94.XI.5).

[b] Resolution 317 (IV), annex. The delegation of the Philippines proposed that the definition be expanded, as the 1949 Convention did not address new contemporary forms of trafficking. That delegation proposed that the definition of "traffic in persons" be elaborated and made clearer, using the international standards formulated in the Slavery Convention signed at Geneva on 25 September 1926 (United Nations, *Treaty Series*, vol. 212, No. 2861) and the 1953 Protocol amending the Slavery Convention (United Nations, *Treaty Series*, vol. 182, No. 2422) and the Platform for Action of the Fourth World Conference on Women (*Report of the Fourth World Conference on Women, Beijing, 4-15 September 1995* (United Nations publication, Sales No. E.96.IV.13), resolution 1, annex II).

[c] *League of Nations Treaty Series*, vol. 112, p. 171.

[d] United Nations, *Treaty Series*, vol. 823, No. 11806.

[e] Ibid., vol. 1456, No. 24631.

[f] Some delegations proposed that reference be made to the Arab Convention on Combating Terrorism of 1998. Some delegations were of the view that the Convention, while not intended as an instrument against terrorism, should endeavour to cover the emerging links between terrorist acts and organized crime.

"(g) Illicit manufacture of and traffic in firearms, their parts and components, ammunition, or explosive materials or devices;[g]

"(h) Illicit traffic in or stealing of motor vehicles, their parts and components; and

"(i) Corruption of public officials and officials of private institutions.[h]]"

3. The following list was circulated at the second session of the Ad Hoc Committee by Mexico on behalf of several delegations:

(a) Illicit traffic in narcotic drugs and psychotropic substances;

(b) Money-laundering;

(c) Traffic in persons, in particular women and children;

(d) Illicit traffic in and transport of migrants;

(e) Counterfeiting currency;

(f) Illicit traffic in or stealing of cultural objects;

(g) Illicit traffic in or stealing of nuclear material, its use or threatening to misuse it;

(h) Acts of terrorism;

(i) Illicit manufacturing of and trafficking in firearms, ammunition, explosives and other related material;

(j) Illicit traffic in or stealing of motor vehicles, their parts and components;

(k) Acts of corruption;

(l) Illicit traffic in human organs;

(m) Illicit access to or illicit use of computer systems and electronic equipment, including electronic transfer of funds;

(n) Kidnapping;

(o) Illicit traffic in or stealing of biological and genetic materials.

4. The following list was proposed by the Government of Egypt:

(a) Illicit traffic in narcotic drugs and psychotropic substances and money-laundering;

(b) Traffic in persons, in particular women and children;

(c) Illicit traffic in and transport of migrants;

(d) Counterfeiting currency;

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[g] One delegation proposed that the definition in the Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and Other Related Materials (A/53/78, annex) should be used.

[h] Individual delegations proposed the inclusion of illicit traffic in women and children under subparagraph 3 (b), as well as the inclusion of the following as additional subparagraphs: illicit traffic in migrants; illicit traffic in endangered animals; illicit traffic in human body parts; illicit access to computer systems and equipment; piracy; kidnapping for ransom; and murder and other grave offences against persons.

(e) Illicit traffic in or stealing of cultural objects;

(f) Illicit traffic in or stealing of nuclear material, its use or threatening to misuse it;

(g) Acts of terrorism as defined in the pertinent international conventions;

(h) Illicit manufacturing of and trafficking in firearms, ammunition, explosives and other related material;

(i) Illicit traffic in or stealing of motor vehicles, their parts and components;

(j) Acts of corruption;

(k) Illicit traffic in human body organs;

(l) Illicit access to or illicit use of computer systems and electronic equipment, including electronic transfer of funds;

(m) Illicit traffic in or stealing of biological and genetic materials.

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Item 4 of the provisional agenda*
Consideration of the revised draft United Nations Convention against Transnational Organized Crime, with particular emphasis on articles 2, 2 *bis* (subparagraph (a) only), 4 *bis*, 9, 10, 10 *bis*, 14, 14 *bis*, 15 and 16

Revised draft United Nations Convention against Transnational Organized Crime[1]

Article 1
Statement of objectives

The purpose of this Convention is to promote cooperation to prevent and combat transnational organized crime more effectively.

* A/AC.254/29.

[1] In the present text, certain words, sentences or entire paragraphs have been placed in square brackets, which in some cases may indicate that the text in question has not been discussed or that delegations have expressly stated that the text requires further consideration. Except as otherwise indicated below, the text of articles 1-3, 5 and 6 was approved by the Ad Hoc Committee at its seventh session (for details, see the report of the Ad Hoc Committee on its seventh session (A/AC.254/25). Except as otherwise indicated below, the text of articles 4 (except subparagraph (c) of paragraph 2), 4 *ter*, 4 *quater*, 7, 7 *bis*, 7 *ter*, 17, 17 *bis*, 18, 18 *bis* and 18 *ter* was approved by the Ad Hoc Committee at its eighth session (for details, see the report of the Ad Hoc Committee on its eighth session (A/AC.254/28).

Article 2
Scope of application[2, 3]

1. The Convention shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of:

(a) The offences established in accordance with articles 3, 4, 4 *ter* and 17 *bis* of this Convention; and

(b) Serious offences as defined in article 2 *bis* of this Convention;

where the offence is transnational in nature and involves an organized criminal group.

2. For the purpose of paragraph 1, an offence is transnational in nature if:

(a) It is committed in more than one State; or

(b) It is committed in one State but a substantial part of its preparation, planning, direction or control takes place in a different State.

3. States Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.[4]

4. Nothing in this Convention entitles a State Party to undertake in the territory of another State the exercise of jurisdiction and performance of functions that are reserved exclusively for the authorities of that other State by its domestic law.

Article 2 bis
Use of terms

For the purposes of this Convention:

(a) "Organized criminal group" shall mean a structured group of three or more persons[5] existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established pursuant to this Convention, in order to obtain, directly or indirectly, a financial or other material benefit;[6]

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[2] As decided by the Ad Hoc Committee at its seventh session, the order of articles 2 and 2 *bis* will be reversed in the final text.

[3] Paragraphs 1 and 2 of article 2 remain under review. The present text of these paragraphs was submitted by the delegation of Singapore at the eighth session of the Ad Hoc Committee (A/AC.254/L.152 and Corr.1) and was regarded as a basis for the further consideration of paragraphs 1 and 2 of article 2. The delegation of the Netherlands proposed that the text of subparagraph (b) of paragraph 2 be replaced with the following: "Its prevention, investigation or prosecution requires the cooperation of at least two States Parties". Some delegations were of the view that agreement on the establishment in article 2 of the Convention of a link between the offences established by the Convention and the involvement of an organized criminal group would imply, as a matter of consequence, the deletion of the phrase "and involving an organized criminal group" from the criminalization articles, especially articles 4 *ter* and 17 *bis* of the Convention.

[4] At the seventh session of the Ad Hoc Committee, the delegation of Poland proposed that paragraphs 3 and 4 be placed in a separate article.

[5] The *travaux préparatoires* will indicate that the inclusion of a specific number of persons would not prejudice the rights of States Parties pursuant to paragraph 2 of article 23 *ter*.

[6] In the discussion on the definition of "organized criminal group", the Ad Hoc Committee agreed that the term "financial or other material benefit" should be understood broadly to include, for example, personal or sexual gratification. The Ad Hoc Committee agreed that the *travaux préparatoires* should indicate that the words "in order to obtain, directly or indirectly, a financial or other material benefit" should be understood broadly, to include, for example, crimes in which the predominant motivation may be sexual gratification, such as the receipt or trade of materials by members of child pornography rings, the trading of children by members of paedophile rings or cost-sharing among ring members. Some delegations, including those of Algeria, Egypt and Turkey, were

(b) "Serious crime" shall mean conduct constituting a criminal offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty. For the purpose of implementing articles 3, 4, 4 *ter* and 17 *bis* of this Convention, a State Party shall consider this definition to refer to a criminal offence under its laws;[7]

(c) "Structured group" shall mean a group that is not randomly formed for the immediate commission of a crime and that does not need to have formally defined roles for its members, the continuity of its membership or a developed structure;

[*Old subparagraph (d) has been deleted.*]

(d) "Property" shall mean assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in, such property;

(e) "Proceeds of crime" shall mean any property derived from or obtained, directly or indirectly, through the commission of an offence;

(f) "Freezing or seizure" shall mean temporarily prohibiting the transfer, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court or a competent authority;

(g) "Confiscation", which includes forfeiture where applicable, shall mean the permanent deprivation of property by order of a court or other competent authority;

(h) "Predicate offence" shall mean any crime or offence as a result of which proceeds have been generated that may become the subject of an offence as defined in article 4 of this Convention;

(i) "Controlled delivery" shall mean the technique of allowing illicit or suspect consignments to pass out of, through or into the territory of one or more States, with the knowledge and under the supervision of their competent authorities, with a view to the investigation of an offence and the identification of persons involved in the commission of the offence.

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of the view that the scope of the Convention should specifically include crimes committed in order to obtain, directly or indirectly, moral benefit. Other delegations were of the view that this concept was ambiguous. The delegation of Algeria proposed the addition of the words "or any other purpose". That proposal was supported at the eighth session of the Ad Hoc Committee by the delegations of Egypt, Morocco and Turkey. At the same session, the delegation of Turkey stated that it could not accept the present formulation of this paragraph, which excluded not only crimes committed for purposes other than financial or material, but also the links between transnational organized crime and terrorist acts, established in the Naples Political Declaration and Global Action Plan against Organized Transnational Crime (A/49/748, annex). Turkey strongly favoured annexing to the Convention an indicative list that included terrorist acts. At the eighth session of the Ad Hoc Committee, the delegation of Japan proposed that the words "one or more serious crimes or offences established pursuant to this Convention" should be replaced with the words "one or more serious crimes or offences established pursuant to articles 4, 4 *ter* or 17 *bis* of the Convention", because inclusion of the offences established pursuant to article 3 in this subparagraph would lead to a tautology due to the existence of the phrase "an organized criminal group" in that article.

[7] Subparagraph b (ii) of article 2 *bis* in the version contained in document A/AC.254/4/Rev.6 was deleted at the seventh session of the Ad Hoc Committee, with its substance to be reconsidered in connection with articles 10, paragraph 5, and 14, paragraph 6.

[*Subparagraph (k) has been deleted.*][8]

Article 3

Criminalization of participation in an organized criminal group

1. Each State Party shall establish as criminal offences, when committed intentionally:

(a) Either or both of the following as criminal offences distinct from those involving the attempt or completion of the criminal activity:

(i) Agreeing with one or more other persons to commit a serious crime for any purpose relating directly or indirectly to the obtaining of a financial or other material benefit and, where required by domestic law, involving an act undertaken by one of the participants in furtherance of the agreement or involving an organized criminal group;

(ii) Conduct by a person who, with knowledge of either the aim and general criminal activity of an organized criminal group or its intention to commit the crimes in question, takes active part in:

a. Criminal activities of an organized criminal group as defined in article 2 *bis* of this Convention;

b. Other activities of the group in the knowledge that his or her participation will contribute to the achievement of the above-described criminal aim;

(b) Organizing, directing, aiding, abetting, facilitating or counselling the commission of serious crime involving an organized criminal group.

2. The knowledge, intent, aim, purpose or agreement referred to in paragraph 1 of this article may be inferred from objective factual circumstances.

3. A State whose laws require involvement of an organized criminal group for purposes of the offences established under paragraph 1 (a) (i) of this article shall ensure that its domestic laws cover all serious crimes involving organized criminal groups. Such States, as well as States whose laws require an act in furtherance of the agreement for purposes of the offences established under paragraph 1 (a) (i), shall so advise the Secretary-General of the United Nations at the time of their signature, ratification, acceptance or approval of or accession to this Convention.

Article 4

Criminalization of the laundering of proceeds of crime

1. Each State Party shall adopt, in conformity with its constitutional principles, such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally:

(a) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising[9] the illicit origin of the

[8] At the seventh session of the Ad Hoc Committee, it was decided that the need to include a definition of "financial institution" in the present article should be reviewed in the context of the final formulation of article 4 *bis*.

[9] The *travaux préparatoires* will show that the words "concealing or disguising" should be understood to include preventing the discovery of the illicit origins of property.

property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;

(b) The concealment or disguise[10] of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;

and, subject to the basic concepts of its legal system:

(c) The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;

(d) Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.

2. For purposes of implementing or applying paragraph 1 of this article:

(a) States Parties shall seek to apply paragraph 1 to the widest range of predicate offences;

(b) States Parties shall include as predicate offences all serious crimes [as defined in articles 2 and 2 *bis*] and the offences established in articles 3, 4 *ter* and 17 *bis* of this Convention. In the case of States Parties whose legislation sets out a list of specific predicate offences, they shall, at a minimum, include a comprehensive range of offences associated with organized criminal groups;[11]

(c) For the purposes of subparagraph (b), predicate offences shall include offences committed both within and outside the criminal jurisdiction of the State Party in question. However, offences committed outside the jurisdiction of a State Party shall constitute predicate offences, provided that the relevant conduct is a criminal offence under the law of the State where it is committed and would be a criminal offence under the law of the State Party implementing or applying this article had it been committed there;[12]

(d) States Parties shall furnish copies or descriptions of their laws implementing this article to the Secretary-General of the United Nations;

(e) If required by the basic principles of a State Party's penal law, then it may be provided that the offences set forth in paragraph 1 of this article do not apply to the persons who committed the predicate offence;[13]

(f) Knowledge, intent or purpose required as an element of an offence set forth in that paragraph may be inferred from objective factual circumstances.

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[10] The note in the *travaux préparatoires* mentioned in footnote 9 will also apply to the words "concealment or disguise" contained in this subparagraph.

[11] The *travaux préparatoires* will include a note to the effect that the phrase "associated with organized criminal groups" is intended to indicate criminal activity of the type in which organized criminal groups engage.

[12] This subparagraph remains under review. At the eighth session of the Ad Hoc Committee, several delegations expressed concern about whether the current formulation of this subparagraph would meet the standards of clarity required for an obligatory provision.

[13] In the *travaux préparatoires* it will be stated that this subparagraph takes into account legal principles of several States where prosecution or punishment of the same person for both the predicate offence and the money-laundering offence is not permitted. Those States confirmed that they did not refuse extradition, mutual legal assistance or cooperation for purposes of confiscation solely because the request was based on a money-laundering offence the predicate offence of which was committed by the same person.

[*Old paragraphs 3 and 3 bis were deleted.*][14]

3. Nothing contained in this article shall affect the principle that the description of the offences to which it refers and of legal defences thereto is reserved to the domestic law of a State Party and that such offences shall be prosecuted and punished in conformity with that law.[15]

Article 4 bis[16]
Measures to combat money-laundering

1. Each State Party:

(a) Shall institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions and, where appropriate, other bodies particularly susceptible to money-laundering, within its competence, in order to deter and detect all forms of money-laundering, which regime shall emphasize requirements for customer identification, record-keeping and the reporting of suspicious transactions;[17]

(b) Shall, without prejudice to articles [14 and 19] of this Convention, ensure that administrative, regulatory, law enforcement and other authorities dedicated to combating money-laundering (including, where appropriate under domestic law, judicial authorities) have the ability to cooperate and exchange information at the national and international levels within the conditions prescribed by its domestic legislation and, to this end, shall consider the establishment of a financial intelligence unit to serve as a national centre for the collection, analysis and dissemination of information regarding potential money-laundering.

2. States Parties shall consider implementing feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders, subject to safeguards to ensure proper use of information and without impeding in any way the movement of legitimate capital. The measures may include a requirement that individuals and businesses report the cross-border transfer of substantial quantities of cash and appropriate negotiable instruments.

3. In establishing a domestic regulatory and supervisory regime under the terms of this article, and without prejudice to any other article of this Convention, States Parties shall [endeavour to] ensure that their implementation and application of this article are consistent with the recommendations contained in annex [...] to this Convention and shall, in addition where appropriate, take account of the relevant initiatives of regional and

[14] The substance of old paragraph 3 *bis* will be taken up in connection with article 15.

[15] In order for this paragraph to be applicable to all offences to be established under this Convention, it should be moved to article 6, after being amended to read as follows: "Nothing contained in this Convention shall affect the principle that the description of the offences established under this Convention and of the applicable legal defences or other legal principles controlling the lawfulness of conduct is reserved to the law of a State Party and that such offences shall be prosecuted and punished in conformity with that law."

[16] The text of this article was revised pursuant to discussion at the informal consultations held during the seventh session of the Ad Hoc Committee. Except where indicated otherwise, this revised text was provisionally approved by the informal consultations and recommended by the Chairmen of the informal consultations as the basis for the consideration and approval of the article by the Ad Hoc Committee at its eighth session. At its eighth session, the Ad Hoc Committee deferred discussion of this article to its ninth session.

[17] Subparagraph (a) will remain under review, pending the final formulation of paragraph 3 of this article and in order to consider whether it would be appropriate to insert the phrase "in conformity with domestic law".

interregional organizations against money-laundering, such as initiatives of the Caribbean Financial Action Task Force, the Commonwealth, the Council of Europe, the Eastern and Southern African Anti-Money-Laundering Group, the European Union, the Financial Action Task Force on Money Laundering and the Organization of American States.[18]

4. States Parties shall endeavour to develop and promote global, regional, subregional and bilateral cooperation among judicial, law enforcement and financial regulatory authorities in order to combat money-laundering.

Article 4 ter
Criminalization of corruption

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the following conduct, when committed intentionally:[19]

(a) The promise, offering or giving to a public official, directly or indirectly, of an undue advantage, for the official himself or another person or entity, in order that the official act or refrain from acting in the exercise of his official duties;

(b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or another person or entity, in order that the official act or refrain from acting in the exercise of his official duties.

2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences conduct referred to in paragraph 1 of this article involving a foreign public official or international civil servant. Likewise, each State Party shall consider establishing as criminal offences other forms of corruption.

3. Each State Party shall also take such measures as may be necessary to establish as criminal offences the participation as an accomplice in an offence established in accordance with this article.

[*Old paragraph 4 was deleted.*]

[18] The text of this paragraph was drafted by an informal working group set up by the Chairman and coordinated by the representative of South Africa at the informal consultations held during the seventh session of the Ad Hoc Committee. It was intended to serve as a basis for further consideration at the eighth session of the Ad Hoc Committee. The delegation of the Islamic Republic of Iran, supported by several other delegations, including that of China, proposed the following alternative text for this paragraph: "In establishing a domestic regulatory and supervisory regime in terms of this article and without prejudice to any other article of this Convention, States Parties may take into consideration the relevant initiatives by regional and interregional organizations against money-laundering, such as initiatives of the Caribbean Financial Action Task Force, the Commonwealth, the Council of Europe, the Eastern and Southern African Anti-Money-Laundering Group, the European Union, the Financial Action Task Force on Money Laundering and the Organization of American States." The delegation of Colombia indicated that, if the recommendations were to be placed in an annex to the Convention, delegations should be given adequate opportunity to examine the annex in detail and to agree on its content.

[19] At its eighth session, the Ad Hoc Committee decided that the question of whether to include at the end of this paragraph the words "and involving an organized criminal group" would remain under review, pending the consideration of article 2 of the Convention.

At its sixth session, the Ad Hoc Committee agreed that the obligation under this article was not intended to include the actions of a person who acted under duress or undue influence.

4. For the purposes of paragraph 1 of this article and article 4 *quater*, "public official" shall mean a public official or a person who provides a public service[20] as defined in the domestic law and as applied in the criminal law of the State in which the person in question performs that function.

Article 4 quater
Measures against corruption

1. In addition to the measures set forth in article 4 *ter* of this Convention, each State Party shall, to the extent appropriate and consistent with its legal system, adopt legislative, administrative or other effective measures to promote integrity and to prevent, detect and punish the corruption of public officials.

2. Each State Party shall take measures to ensure effective action by its authorities in the prevention, detection and punishment of the corruption of public officials, including by providing such authorities with adequate independence to deter the exertion of inappropriate influence on their actions.

Article 5
Liability of legal persons

1. Each State Party shall take such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in serious crimes involving an organized criminal group and for the offences established under articles 3 and 4 of this Convention.

2. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.

3. Such liability shall be incurred without prejudice to the criminal liability of the natural persons who have committed the offences.

4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.

Article 6
Prosecution, adjudication and sanctions

1. Each State Party shall make the commission of an offence established under this Convention liable to sanctions that take into account the gravity of that offence.

2. Each State Party shall endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences that are covered by this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.

3. In the case of offences established in accordance with articles 3, 4, 4 *ter* and 17 *bis* of this Convention, each State Party shall take appropriate measures, in accordance with its domestic law and with due regard to the rights of the defence, to seek to ensure

[20] The *travaux préparatoires* should indicate that the concept of a person who provides a public service applies to particular legal systems and that the incorporation of this concept in the definition is intended to facilitate cooperation between parties with that concept in their legal systems.

that conditions imposed in connection with decisions on release pending trial or appeal take into consideration the need to ensure the presence of the defendant at subsequent criminal proceedings.

4. Each State Party shall ensure that its courts or other competent authorities bear in mind the grave nature of the offences that are covered by this Convention when considering the eventuality of early release or parole of persons convicted of such offences.

5. Each State Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence covered by this Convention and a longer period where the alleged offender has evaded the administration of justice.

Article 7[21, 22]
Confiscation and seizure

1. States Parties shall adopt such measures as may be necessary to enable confiscation of:

(a) Proceeds of crime or property the value of which corresponds to that of such proceeds;

(b) Property, equipment or other instrumentalities used in or destined for use[23] in offences covered by this Convention.

2. States Parties shall adopt such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation.

3. If proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this article instead of the proceeds.

4. If proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to seizure or freezing, be liable to confiscation up to the assessed value of the intermingled proceeds.

[21] The text of this article was provisionally approved by the Ad Hoc Committee at its eighth session. The delegation of the United States noted, however, that the current text of the article did not resolve the question of to which crimes the obligation to provide for confiscation and seizure would apply. The problem stems from differing legal approaches and is similar to that encountered in relation to the scope of article 4. A similar matter may arise with respect to article 7 *bis* for those States which will rely on their domestic legislation in implementing its provisions. It was therefore suggested that the matter could be resolved by supplementing article 7 with a provision that would read as follows: "The provisions of subparagraphs (a) to (d) of paragraph 2 of article 4 shall apply *mutatis mutandis* in defining the scope of offences for which States Parties shall apply this article and, where appropriate, for the purpose of implementing article 7 *bis*."

[22] The *travaux préparatoires* should indicate that the interpretation of this article takes into account the principle in international law that property belonging to a foreign State and used for non-commercial purposes may not be confiscated except with the consent of the foreign State. Furthermore, the *travaux préparatoires* should indicate that it is not the intention of the Convention to restrict the rules that apply to diplomatic or State immunity, including that of international organizations.

[23] The *travaux préparatoires* should indicate that this expression is meant to signify an intention of such a nature that it may be viewed as tantamount to an attempt to commit a crime.

5. Income or other benefits[24] derived from proceeds of crime, from property into which proceeds of crime have been transformed or converted or from property with which proceeds of crime have been intermingled shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds of crime.

6. For the purposes of this article and article 7 *bis*, each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or be seized. A State Party shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.

7. Each State Party may consider the possibility of requiring that an offender demonstrate the lawful origin of alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the principles of its domestic law and with the nature of the judicial and other proceedings.

8. The provisions of this article shall not be construed to prejudice the rights of bona fide third parties.

9. Nothing contained in this article shall affect the principle that the measures to which it refers shall be defined and implemented in accordance with and subject to the provisions of the domestic law of a State Party.

Article 7 bis
International cooperation for purposes of confiscation

1. A State Party that has received a request from another State Party having jurisdiction over an offence covered by this Convention for confiscation of proceeds of crime, property, instrumentalities or any other things referred to in paragraph 1 of article 7, situated in its territory, shall:

(a) Submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such an order is granted, give effect to it; or

(b) Submit to its competent authorities, with a view to giving effect to it to the extent requested, an order of confiscation issued by a court in the territory of the requesting Party in accordance with paragraph 1 of article 7, insofar as it relates to proceeds of crime, property, instrumentalities or any other things referred to in paragraph 1 of article 7 situated in the territory of the requested Party.

2. Following a request made by another State Party having jurisdiction over an offence covered by this Convention, the requested State Party shall take measures to identify, trace and freeze or seize proceeds of crime, property, instrumentalities or any other things referred to in paragraph 1 of article 7 for the purpose of eventual confiscation to be ordered either by the requesting State Party or, pursuant to a request under paragraph 1 of this article, by the requested State Party.

3. The provisions of article 14 of this Convention are applicable *mutatis mutandis*. In addition to the information specified in paragraph 10 of article 14, requests made pursuant to this article shall contain the following:

(a) In the case of a request pertaining to paragraph 1 (a) of this article, a description of the property to be confiscated and a statement of the facts relied upon by

[24] The *travaux préparatoires* should indicate that this term is intended to encompass material benefits, as well as legal rights and interests of an enforceable nature, that are subject to confiscation.

the requesting State Party sufficient to enable the requested State Party to seek the order under its domestic law;

(b) In the case of a request pertaining to paragraph 1 (b) of this article, a legally admissible copy of an order of confiscation issued by the requesting State Party upon which the request is based, a statement of the facts and information as to the extent to which the execution of the order is requested;

(c) In the case of a request pertaining to paragraph 2 of this article, a statement of the facts relied upon by the requesting State Party and a description of the actions requested.[25]

4. The decisions or actions provided for in paragraphs 1 and 2 of this article shall be taken by the requested State Party, in accordance with and subject to the provisions of its domestic law and its procedural rules or any bilateral or multilateral treaty, agreement or arrangement to which it may be bound in relation to the requesting State Party.

5. Each State Party shall furnish the Secretary-General of the United Nations with the text of any of its laws and regulations that give effect to this article and the text of any subsequent changes to such laws and regulations.

6. If a State Party elects to make the taking of the measures referred to in paragraphs 1 and 2 of this article conditional on the existence of a relevant treaty, that Party shall consider this Convention the necessary and sufficient treaty basis.

7. States Parties shall seek to conclude bilateral and multilateral treaties, agreements or arrangements to enhance the effectiveness of international cooperation pursuant to this article.

8. Cooperation under this article may be refused by a State Party if the offence to which the request relates is not an offence covered by this Convention.

9. The provisions of this article shall not be construed to prejudice the rights of bona fide third parties.

Article 7 ter[26]
Disposal of confiscated assets

1. Proceeds of crime or property confiscated by a State Party pursuant to article 7 or paragraph 1 of article 7 *bis* of this Convention shall be disposed of by that State Party in accordance with its domestic law and administrative procedures.

2. When acting on the request made by another State Party in accordance with article 7 *bis* of this Convention, States Parties shall, to the extent permitted by domestic law and if so requested, give priority consideration to returning the confiscated assets to the requesting State Party so that it can give compensation to the victims of the crime or return such assets to their legitimate owners.

3. When acting on the request made by another State Party in accordance with articles 7 and 7 *bis* of this Convention, a State Party may give special consideration to concluding agreements on:

[25] The Ad Hoc Committee may wish to review this paragraph in the light of the final formulation of article 14.

[26] The *travaux préparatoires* should indicate that, when feasible, States Parties would examine whether it would be appropriate, in conformity with individual guarantees embodied in their domestic law, to use confiscated assets to cover the costs of assistance provided pursuant to paragraph 2 of article 18.

(a) Contributing the value of such proceeds and property, or funds derived from the sale of such proceeds or property, or a substantial part thereof to intergovernmental bodies specializing in the fight against organized crime;

(b) Sharing with other States Parties, on a regular or case-by-case basis, such proceeds or property, or funds derived from the sale of such proceeds or property, in accordance with its domestic law, administrative procedures or bilateral or multilateral agreements entered into for this purpose.

[*Article 8 was deleted.*]

Article 9[27]
Jurisdiction

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences established in articles 3, 4, 4 *ter* and 17 *bis* of this Convention when:[28]

(a) The offence is committed in the territory of that State; or

(b) The offence is committed on board a vessel that is flying the flag of that State or an aircraft that is registered under the laws of that State at the time the offence is committed.[29]

2. Subject to paragraphs 3 and 4 of article 2 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

(a) The offence is committed against a national of that State;[30]

(b) The offence is committed by a national or a habitual resident[31] of that State; or

(c) The offence is one of those established in article 3 of this Convention and is committed outside its territory with a view to the commission, within its territory, of an offence covered by this Convention.[32]

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[27] The text of this article was revised at the informal consultations held during the eighth session of the Ad Hoc Committee and was recommended by the Chairmen of these informal consultations to the Ad Hoc Committee for consideration at its ninth session.

[28] At the informal consultations held during the eighth session of the Ad Hoc Committee, the delegations of the Islamic Republic of Iran and Pakistan suggested the inclusion of the words "subject to the fundamental principles of their legal system".

[29] At the informal consultations held during the eighth session of the Ad Hoc Committee, the delegation of the United States of America expressed preference for a more flexible formulation of this paragraph in view of the broad scope of the draft Convention.

[30] Following extensive discussion at the informal consultations held during the eighth session of the Ad Hoc Committee, it was agreed to delete reference to habitual residents from this subparagraph on the understanding that States should take into consideration the need to extend possible protection that might stem from the establishment of jurisdiction to stateless persons who might be habitual or permanent residents in their countries. Such an understanding might be reflected in the *travaux préparatoires*.

[31] At the informal consultations held during the eighth session of the Ad Hoc Committee, several delegations suggested that reference to habitual residents should be deleted.

[32] At the informal consultations held during the eighth session of the Ad Hoc Committee, it was broadly agreed that this subparagraph required redrafting to reflect more precisely the concept on which it was based. A drafting group of interested delegations held consultations that resulted in a revised draft for the subparagraph, which was contained in document A/AC.254/L.184 and will be before the Ad Hoc Committee at its ninth session in document A/AC.254/5/Add.23. Owing to lack of time, this revised text was not discussed at the informal consultations held during the eighth session of the Ad Hoc Committee.

3. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with articles 3, 4, 4 *ter* and 17 *bis* of this Convention and serious crimes involving an organized criminal group when the alleged offender is present in its territory and it does not extradite him or her to any of the States Parties solely on the ground:

(a) That the offence has been committed by one of its nationals;

[(b) That a type of punishment that does not exist in the territory of the requested Party may be imposed on that person in the territory of the requesting Party; or]

[(c) That the offence has been committed in its territory or on board a vessel that was flying its flag or an aircraft that was registered under its law at the time the offence was committed.][33, 34]

4. Each State Party may also take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with articles 3, 4, 4 *ter* and 17 *bis* of this Convention and serious crimes involving an organized criminal group when the alleged offender is present in its territory and it does not extradite him or her. [35]

5. If the State exercising its jurisdiction under paragraph 1 or 2 of this article has been notified, or has otherwise learned, that one or more other States are conducting an investigation or carrying out criminal proceedings in respect of the same conduct, the competent authorities of those States shall, as appropriate, consult one another with a view to coordinating their actions.[36]

6. Without prejudice to norms of general international law, this Convention does not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

[*Paragraph 7 was deleted.*][37]

[33] At the informal consultations held during the eighth session of the Ad Hoc Committee, several delegations questioned the utility of this subparagraph as well as whether it would duplicate the provision of paragraph 1 of this article.

[34] At the informal consultations held during the eighth session of the Ad Hoc Committee, using as a basis for their work footnote 53 of document A/AC.254/4/Rev.7, many delegations registered their preference for option 1 contained in that footnote, which corresponds to present subparagraph (a) of paragraph 3 and which would limit the application of the principle *aut dedere aut judicare* to the refusal of extradition due to the nationality of the offender. Some delegations indicated their preference for option 2 of footnote 53, which corresponds to present subparagraph (b) of paragraph 3.

[35] The text of paragraphs 3 and 4 was inserted at the informal consultations held during the eighth session of the Ad Hoc Committee and remains under review.

[36] At the informal consultations held during the eighth session of the Ad Hoc Committee, it was agreed that the *travaux préparatoires* should indicate that an example of how useful coordination between States Parties would be was the need to ensure that time-sensitive evidence was not lost.

[37] At the informal consultations held during the eighth session of the Ad Hoc Committee, it was agreed to delete paragraph 7 on the understanding that the matter addressed by that paragraph would be covered by article 24 of the Convention.

Article 10[38]
Extradition[39]

1. This article shall apply to the offences covered by this Convention that are punishable under the laws of both the requesting States Parties and the requested States Parties.[40]

[2. If the request for extradition includes several separate serious crimes, but of which some are other than those covered by this Convention, the requested Party may apply this article also in respect of the latter offences.][41]

3. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. The Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.[42]

4. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence to which this article applies.

5. States Parties that make extradition conditional on the existence of a treaty shall:

(a) At the time of deposit of their instrument of ratification, acceptance or approval of this Convention, inform the Secretary-General of the United Nations of whether they will take this Convention as the legal basis for cooperation on extradition with other States Parties to this Convention; and

(b) When they do not take this Convention as the legal basis for cooperation on extradition, [endeavour to conclude] [consider concluding] treaties on extradition with other States Parties to this Convention in order to implement this article.

6. States Parties that do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.

7. Extradition shall be subject to the conditions provided for by the law of the requested State Party or by applicable extradition treaties, including, *inter alia*, conditions

[38] Part of the text of this article was revised at the informal consultations held during the eighth session of the Ad Hoc Committee and was recommended by the Chairmen of these informal consultations to the Ad Hoc Committee for consideration at its ninth session.

[39] The delegation of India had proposed (A/AC.254/L.43) the insertion of a new paragraph following paragraph 12 of this article, dealing with requests for extradition of the same person or persons. Following discussion of that proposal at the fifth session of the Ad Hoc Committee, India indicated that it would present at a subsequent session a new draft that would contain language that was less obligatory. Several delegations noted, however, that in their view the subject was adequately covered in paragraph 7.

[40] Following extensive discussion during the informal consultations held at the eighth session of the Ad Hoc Committee and pursuant to a proposal made by the delegation of China (A/AC.254/L.182), it was agreed to incorporate the principle of dual criminality into this paragraph and to amend paragraph 7 to ensure that minor offences were not considered extraditable.

[41] At the informal consultations held during the eighth session of the Ad Hoc Committee, some delegations expressed concern about the scope of this paragraph and suggested its deletion.

[42] At the informal consultations held during the eighth session of the Ad Hoc Committee, the delegation of Pakistan expressed reservations regarding this paragraph and suggested its deletion.

in relation to the minimum penalty requirement for extradition and the grounds upon which the requested Party may refuse extradition.

8. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person's position for any of these reasons.[43]

9. States Parties shall endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies. [44]

[*Old paragraph 7 bis was deleted.*][45]

10. Subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.

11. [(a) Without prejudice to the exercise of any criminal jurisdiction established in accordance with its domestic law, a State Party in whose territory an alleged offender

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[43] Some delegations suggested that this paragraph be deleted.

At the informal consultations held during the eighth session of the Ad Hoc Committee, the delegation of Italy proposed the insertion after paragraph 8 of the following provision:

> "Without prejudice to the use of other grounds for refusal, the requested State may refuse to extradite on the ground that a decision has been issued *in absentia* only if it is not proved that the case has been tried with the same guarantees as when a defendant is present and he or she, having knowledge of the trial, has deliberately avoided being arrested or has deliberately failed to appear at the trial. However, when such proof is not given, extradition may not be refused if the requesting State gives assurance, deemed satisfactory by the requested State, that the person whose extradition is sought shall be entitled to a new trial protecting his or her rights of defence."

In the discussion that followed, several delegations expressed serious concerns about whether this provision could be compatible with the fundamental principles of their legal systems. The delegation of Italy undertook to consult further with other interested delegations and to explore the possibility of reformulating the text in order to meet all concerns.

At the informal consultations held during the eighth session of the Ad Hoc Committee, the delegation of Poland proposed the insertion after paragraph 8 of the following provision:

> "For the purposes of extradition under this article, the offences established in articles 3, 4, 4 *ter* and 17 *bis* of this Convention shall not be considered fiscal offences, without prejudice to basic concepts of the domestic legal systems of States Parties."

This proposal might be reviewed in conjunction with article 14. The delegations of Luxembourg and Switzerland expressed concerns about the inclusion of such a provision in article 10.

[44] The *travaux préparatoires* should indicate that this paragraph should not be interpreted as prejudicing in any way the fundamental legal rights of the defendant. At the informal consultations held during the eighth session of the Ad Hoc Committee, the delegation of Pakistan proposed the insertion of the words "subject to their domestic laws".

[45] The *travaux préparatoires* to paragraph 9 should indicate that one example of implementation of this paragraph would be speedy and simplified procedures of extradition, subject to the domestic law of the requested Party for the surrender of persons sought for the purpose of extradition, subject to the agreement of the requested Party and the consent of the person in question. The consent, which should be expressed voluntarily and in full awareness of the consequences, should be understood as being in relation to the simplified procedures and not to the extradition itself.

is found shall, if it does not extradite him or her in respect of an offence established in accordance with articles 3, 4, 4 *ter* or 17 *bis* of this Convention and a serious crime involving an organized criminal group and has established its jurisdiction over the offence in accordance with paragraph 3 or 4 of article 9 of this Convention, be obliged, at the request of the State Party seeking extradition, to submit the case without undue delay to its competent authorities for the purpose of prosecution through proceedings in accordance with the laws of the State where the offender is found;] [46, 47]

Option 1

[(a *bis*) The States Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution;][48]

Option 2

[(a *bis*) A State Party that submits a case for prosecution following the denial of extradition on grounds of nationality shall treat the investigation and prosecution with diligence, shall devote sufficient resources to conduct the matter effectively and shall coordinate the matter with the requesting State. It shall ensure that its mutual assistance, procedural and evidentiary laws enable effective action to be taken on the basis of evidence obtained from another State;][49]

(b) Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought and this State and the State seeking the extradition of the person agree with this option and other terms that they may deem appropriate, such a conditional extradition or surrender shall be sufficient to discharge the obligation set forth in subparagraph (a) of this paragraph.

12. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested Party shall, if its law so permits and if it is in conformity with the requirement of such law, upon

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[46] The text of this subparagraph is based on a proposal submitted by Japan at the informal consultations held during the eighth session of the Ad Hoc Committee and remains under review. The structure of the text and the scope of the principle of *aut dedere aut judicare* are among the issues that need to be discussed.

[47] At the informal consultations held during the eighth session of the Ad Hoc Committee, there was a discussion on whether to insert after this subparagraph additional text along the lines of what had previously been included in footnote 55 of the text of the draft Convention (A/AC.254/4/Rev.7). There were two options for the proposed additional text as follows: option 1, "Those authorities shall take their decision in the same manner as in the case of any other offence of a grave nature under the law of that State."; and option 2, "Those authorities shall take their decision taking into account the serious nature of the offence." The issues addressed in either of these options were deemed to be related to the issues addressed in either of the options for subparagraph (a *bis*). Delegations agreed that an appropriate text combining both issues and the corresponding options could be drafted at the ninth session of the Ad Hoc Committee.

[48] Proposal submitted by the delegation of China at the fourth session of the Ad Hoc Committee (A/AC.254/L.64). Several delegations expressed their preference for this option at the informal consultations held during the eighth session of the Ad Hoc Committee.

[49] Proposal submitted by the delegation of the United States at the fourth session of the Ad Hoc Committee (A/AC.254/L.33).

application of the requesting Party, consider the enforcement of the sentence that has been imposed under the law of the requesting Party or the remainder thereof.

13. Any person regarding whom proceedings are being carried out in connection with any of the offences covered by this Convention shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the law of the State in the territory of which that person is present.

14. States Parties shall seek to conclude bilateral and multilateral agreements to carry out or to enhance the effectiveness of extradition.

15. Before refusing extradition, the requested State Party shall [whenever possible or when requested by the requesting State Party] [where appropriate or when requested by the requesting State Party] consult with the requesting State Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation.[50]

Article 10 bis
Transfer of sentenced persons

States Parties may consider entering into bilateral or multilateral agreements, either ad hoc or general, on the transfer to their territory of persons sentenced to imprisonment or other forms of deprivation of liberty for offences to which this article applies, in order that they may complete their sentences there.

[*Articles 11, 12 and 13 were merged into new article 10.*]

Article 14
Mutual legal assistance[51]

1. States Parties shall afford one another the widest measure of mutual legal assistance [, within the conditions prescribed by the domestic legislation][52] in investigations,[53] prosecutions and judicial proceedings in relation to the crimes or offences covered by this Convention, as provided for in article 2, paragraph 1.[54]

[2. Without prejudice to the other limitations to the obligation to assist set forth in this article, mutual legal assistance also shall be afforded where the requesting State

[50] At the informal consultations held during the eighth session of the Ad Hoc Committee, there was extensive discussion regarding the formulation of this paragraph. Several delegations stated that notwithstanding practical considerations that the words "where appropriate" or "whenever possible" were intended to address, the obligatory nature of this paragraph should not be affected, especially in connection with paragraph 8 of this article.

[51] Several delegations proposed that the Model Treaty on Mutual Assistance in Criminal Matters (General Assembly resolution 45/117, annex) be used as the basis for the drafting of this article.

One delegation suggested that the corresponding provisions in the International Convention for the Suppression of Terrorist Bombings (General Assembly resolution 52/164, annex) should be taken as the basis for this article.

[52] Several delegations suggested that this phrase should be deleted, on the ground that the concern was adequately dealt with in paragraph 17. One delegation disagreed, noting that paragraph 17 related to a question of procedure.

[53] Some delegations were of the view that, since the concept of "investigations" in paragraph 1 assumed the suspicion of involvement in crime, paragraph 2 was redundant.

[54] Some delegations preferred a more descriptive formulation of the scope of this paragraph.

Party is investigating a serious crime and suspects the involvement of an organized criminal group.][55]

[3. Each State Party shall, to the fullest extent possible under its relevant laws, treaties and arrangements, provide prompt and effective cooperation to another Party for proceedings brought by a State Party against a legal person under article 5 of this Convention.][56]

[4. No State Party shall be entitled to undertake, in the territorial jurisdiction of any other State Party, the performance or discharge of any functions for which the jurisdiction or competence is reserved exclusively for the authorities of that other Party under its domestic laws or regulations.][57]

5. Mutual assistance to be afforded in accordance with this article may be requested for any of the following purposes:[58]

(a) Taking evidence or statements from persons;

(b) Effecting service of judicial documents;

(c) Executing searches, [freezing][59] and seizures;

[(d) Seizing, confiscating and surrendering property;][60]

(e) Examining objects and sites;

(f) Providing information, evidentiary items [and expert evaluations];[61]

(g) Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;[62]

(h) Identifying or tracing proceeds, property, instrumentalities or other things for evidentiary purposes;

(i) Facilitating the appearance of persons in the requesting State Party;

[(j) Locating or identifying persons or objects;][63]

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[55] See footnote 53 above. One delegation noted that in view of the operational and financial resources to be expended by the requested State, a proper basis must exist before assistance commenced.

[56] This paragraph was inserted on the ground that, according to the laws of some States, legal persons as such could not be suspects or defendants in a criminal case and thus would not otherwise be covered by the present article. Delegations generally supported the idea contained in this paragraph, although some were of the view that it was already covered by paragraph 1. A number of delegations favoured the following alternative formulation:

"Mutual legal assistance shall be afforded with respect to investigations, prosecutions and judicial proceedings relating to offences for which a legal person may be held li. ble in the requesting State Party."

[57] This paragraph was proposed by Mexico at the fourth session of the Ad Hoc Committee (see A/AC.254/L.44). The Chairman indicated that it required further consideration.

[58] The delegation of Belgium suggested that this paragraph should be reformulated in order to ensure that it did not imply that the list of measures was exhaustive. Other delegations supported that suggestion.

[59] Proposal of the delegation of China.

[60] Proposal of the delegation of Mexico.

[61] The text in brackets is a proposal of the delegation of China.

[62] Some delegations pointed out that the issues of money-laundering and bank secrecy were still under consideration. This subparagraph would therefore need to be reviewed in the light of agreement on article 4 *bis*.

[63] Proposal of the delegation of China.

(k) Any other type of assistance allowed by the law of the requested [or requesting][64] State Party.

6. Without prejudice to national law, the competent authorities of a State Party may, without prior request, transmit information relating to criminal matters to a competent authority in another State where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by that authority pursuant to this Convention.

7. The transmission of such information shall be without prejudice to inquiries and criminal proceedings in the State of the competent authorities providing the information. The competent authorities receiving the information shall comply with a request that said information remain confidential, even temporarily, or with restrictions on its use.[65]

8. The provisions of this article shall not affect the obligations under any other treaty, bilateral or multilateral, that governs or will govern, in whole or in part, mutual legal assistance.[66]

9. Paragraphs 11 to 29 of this article shall apply to requests made pursuant to this article if the States Parties in question are not bound by a treaty of mutual legal assistance. If those States Parties are bound by such a treaty, the corresponding provisions of that treaty shall apply unless the Parties agree to apply paragraphs 11 to 29 in lieu thereof.

10. States Parties shall not decline to render mutual legal assistance under this article on the ground of bank secrecy.[67]

11. States Parties may not decline to render mutual legal assistance under this article on the ground of absence of dual criminality, unless the assistance required involves the application of coercive measures.[68]

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[64] Proposal of the delegation of Finland.

[65] Paragraphs 6 and 7 were proposed by the delegation of Italy (see A/AC.254/5/Add.8) and received wide support. There were suggestions for refinement of the text, also in order to avoid overlap with the provisions of article 19, on law enforcement cooperation. According to some delegations, a possible model for a more streamlined text might be found in article 28 of the Council of Europe Criminal Law Convention on Corruption of 1999. One delegation suggested that the two paragraphs could be placed in a separate article entitled "Spontaneous communication of information".

[66] It was suggested at the informal preparatory meeting held in Buenos Aires in 1998 that the substance of this paragraph could be integrated into a more general article on the relationship of the Convention to other bilateral or multilateral treaties.

[67] This paragraph received broad support. However, some delegations expressed reservations about it.

[68] This paragraph received considerable support. However, several delegations expressed reservations on the ground that, in view of the broad scope of the Convention, the principle of dual criminality had to apply to mutual legal assistance. In an effort to find a compromise solution, the delegation of China proposed the formulation below. Several delegations supported the proposal of China.

> "The requested State Party shall be obliged to provide assistance only if the conduct in relation to which the request was made would constitute an offence under its domestic law. However, the requested State Party may, when it deems appropriate, provide assistance, to the extent it may decide at its discretion, irrespective of whether the conduct would constitute an offence under the laws of both the requesting and requested States Parties."

The United Kingdom proposed as a compromise formulation that the original paragraph be made applicable only to offences established by the Convention.

Some delegations noted that the connection between this paragraph and paragraph 21 should be reviewed.

The delegation of Singapore pointed out that the Commonwealth Scheme for Mutual Assistance in Criminal Matters of 1986 provided for dual criminality as a ground for refusal.

12. States Parties shall[69] [, where not contrary to fundamental legal principles,] adopt measures sufficient to enable a person in the custody of one State Party whose presence in another State Party is requested to give evidence or to assist in the investigations to be transferred if the person consents and if the competent authorities of both States agree.[70] Transfer under this paragraph shall not be for the purpose of standing trial. For the purposes of this paragraph:[71]

(a) The State to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise authorized by the State from which the person was transferred;

(b) The State to which the person is transferred shall return the person to the custody of the State from which the person was transferred [as soon as circumstances permit][72] or as otherwise agreed by the competent authorities of both States;

(c) The State to which the person is transferred shall not require the State from which the person was transferred to initiate extradition[73] proceedings for the return of the person;

(d) The person transferred shall receive credit for service of the sentence imposed in the State from which he or she was transferred for time served in the custody of the State to which he or she was transferred.[74]

13. States Parties shall designate a central authority or, when necessary, central authorities[75] that shall have the responsibility and power to execute requests for mutual

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Some delegations pointed out that the term "coercive measures" might have a different meaning in different jurisdictions.

[69] Although some delegations deemed it important that this provision be mandatory, some other delegations proposed that "shall" be changed to "may". The delegation of Germany proposed the formulation "States shall endeavour to adopt". Some delegations noted that alternative formulations were contained in article 13 of the International Convention for the Suppression of Terrorist Bombings and article 93 of the Rome Statute of the International Criminal Court (A/CONF.183/9).

The delegation of Singapore proposed the formulation of article 13, paragraph 1, of the Model Treaty on Mutual Assistance in Criminal Matters, which reads as follows:

"Upon the request of the requesting State, and if the requested State agrees and its law so permits, a person in custody in the latter State may, subject to his or her consent, be temporarily transferred to the requesting State to give evidence or to assist in the investigations."

One delegation noted the operational and security implications and suggested the possibility of alternative methods of obtaining the assistance or testimony of the person in custody, which would obviate the need for his or her physical transfer, such as the use of video link facilities.

[70] One delegation proposed that paragraph 27 immediately follow this paragraph.

[71] Some delegations proposed that this paragraph be made into a separate article. Belgium suggested that this paragraph should be supplemented with the following text: "If the transferred person flees, the State to which that person was transferred shall take every possible measure to ensure his or her apprehension."

[72] Several delegations proposed the deletion of the words "as soon as circumstances permit". The delegation of China proposed that the phrase be replaced with the words "as soon as the person has finished giving evidence or assisting in the investigations".

[73] The delegation of France proposed that the words "extradition proceedings" be replaced with the words "extradition or other proceedings".

[74] The delegation of Mexico proposed the insertion of the following subparagraph: "The authorities of the requested State Party may be present at proceedings conducted in the requesting State Party."

[75] Some delegations proposed the deletion of the words "or, when necessary, central authorities". Some other delegations were in favour of retaining this reference. Several delegations emphasized that a distinction was necessary between the authorities responsible for receiving or forwarding requests and those competent to execute requests. The delegation of Australia proposed to make this distinction by referring to "central offices" for authorities only receiving or forwarding requests and to "competent authority" for authorities

legal assistance or to transmit them to the competent authorities for execution. Central authorities shall play an active role in ensuring the speedy execution of requests [, controlling quality and setting priorities].[76] The Secretary-General of the United Nations shall be notified of the authority or authorities designated for this purpose. Transmission of requests for mutual legal assistance and any communication related thereto shall be effected between the authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it through diplomatic channels and, in urgent circumstances, where the Parties agree, through the International Criminal Police Organization, if possible.[77]

14. Requests shall be made in writing or, where possible,[78] by any means capable of producing a written record in a language acceptable to the requested State Party, under conditions allowing that Party to establish authenticity.[79] The Secretary-General shall be notified of the language or languages acceptable to each Party. In urgent circumstances and where agreed by the States Parties, requests may be made orally, but shall be confirmed in writing forthwith.

15. A request for mutual legal assistance shall contain:

(a) The identity of the authority making the request;

(b) The subject matter and nature of the investigation, prosecution or proceeding to which the request relates and the name and the functions of the authority conducting the investigation prosecution or proceeding;

(c) A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;

(d) A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed;

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executing requests.

The delegation of China proposed the deletion of the word "central" from this paragraph or the insertion of the following sentence after the first sentence of this paragraph: "States Parties may also designate other authorities for the same purpose for its special regions or territories that have separate systems of mutual legal assistance." The delegation of Canada referred to a proposal it had made on this matter in document A/AC.254/L.42 and indicated that it would continue consultations with other interested delegations with a view to formulating a text that would attract consensus.

[76] Some delegations proposed the deletion of this phrase in brackets, *inter alia*, on the ground that it could be seen to be in contradiction to the principle of the independence of the judiciary. One delegation recalled that the phrase had been taken from the amendments to the Model Treaty on Mutual Assistance in Criminal Matters.

[77] Some delegations were of the view that this paragraph, together with the corresponding provision on central authorities in article 10 (Extradition), should be placed in a separate article entitled "Transmission of requests for extradition and mutual assistance", to precede the articles on those issues. It was also proposed that such a separate article should more generally include provisions on channels of communication in connection with different forms of international cooperation in criminal matters.

[78] It was agreed at the fourth session of the Ad Hoc Committee to include this clause in order to take into account the limited capabilities of many countries, especially developing countries, and in order to emphasize that modern means of communication were useful for the transmission of urgent requests. One delegation noted that the provision sought to balance the competing interests of the requesting State to obtain speedy execution of requests and of the requested State to ensure that action was only taken on the basis of credible and substantial information.

[79] The last phrase of this sentence was previously contained in a footnote and was moved into the body of the text pursuant to a proposal by the delegation of France that received wide support at the fourth session of the Ad Hoc Committee.

(e) Where possible, the identity, location and nationality of any person concerned;

(f) The purpose for which the evidence, information or action is sought.[80]

16. The requested State Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.

17. A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to the domestic law of the requested Party and where possible, in accordance with the procedures specified in the request.[81]

18. Wherever possible and consistent with fundamental principles of domestic law, a State Party shall permit [encourage] testimony, statements or other forms of assistance to be given via video link or other modern means of communication and, subject to domestic law, shall ensure that perjury committed under such circumstances is a criminal offence.[82, 83]

19. The requesting State Party, if so requested by the requested State, shall not transmit or use information or evidence furnished by the requested Party for investigations, prosecutions or proceedings other than those stated in the request without the prior consent of the requested Party. Nothing in this paragraph shall preclude the requesting Party from, in its proceedings, disclosing information or evidence that is exculpatory to an accused person.[84]

20. The requesting State Party may require that the requested Party keep confidential the fact and substance of the request, except to the extent necessary to execute

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[80] At the fourth session of the Ad Hoc Committee, it was pointed out that the source of this paragraph was the 1988 Convention. The delegation of Colombia expressed its preference for a simplified version of the text.

[81] One delegation noted that this paragraph and paragraph 1 overlapped in part.

The delegation of Canada submitted a proposal for reformulation of the text of this paragraph (see A/AC.254/L.42), which received limited support. The delegation of Italy submitted a proposal for reformulation of this paragraph and the addition of another paragraph (see A/AC.254/5/Add.8). The Ad Hoc Committee was of the view that the ideas contained in that proposal merited further consideration. In particular, the second paragraph of that proposal might be considered further in conjunction with paragraph 25 of this article.

[82] Several delegations expressed concern about the criminalization of perjury in this paragraph. The clause on domestic law was inserted to make such criminalization optional and thus meet those concerns. Nevertheless, several delegations expressed their preference for the deletion of the provision.

[83] The delegation of Japan suggested that the adoption of the necessary measures enabling testimony via video link should be optional. The delegation of Italy proposed the insertion of several new paragraphs after paragraph 18 (see A/AC.254/5/Add.8). The first paragraph of that proposal was favourably received at the fourth session of the Ad Hoc Committee as a potential alternative to paragraph 18. The first paragraph reads as follows:

> "Where an individual is in the territory of a State Party and has to be heard as a witness or expert by the judicial authorities of another State Party, the first State Party may, at the request of the other, permit the hearing to take place by video conference if the criminal proceedings for which the hearing was requested provide appropriate guarantees of conformity with its fundamental principles of law and where it is not possible or desirable for the individual in question to appear in person in the territory of the requesting State."

The rest of the proposal made by Italy was found to contain many useful concepts and ideas, but was deemed too lengthy and detailed for an international legal instrument. At the fifth session of the Ad Hoc Committee, Italy undertook to submit a redraft of its proposal at a subsequent session.

[84] This paragraph was redrafted at the fifth session of the Ad Hoc Committee on the basis of the summary of the Chairman. One delegation pointed out that the first sentence would require further consideration. One other delegation expressed concern that the second sentence left open to the requesting State Party the possibility of using the information or evidence for a purpose other than that noted in the request.

the request. If the requested Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting Party.

21. Mutual legal assistance may be refused:

(a) If the request is not made in conformity with the provisions of this article;

(b) If the requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, *ordre public* or other essential interests;

(c) If the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or proceedings under their own jurisdiction;[85]

(d) If it would be contrary to the fundamental principles of the legal system of the requested State Party relating to mutual legal assistance for the request to be granted;

(e) If the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's gender, race, religion, nationality or political opinions;[86]

(f) If the request relates to an offence that is considered by the requested State Party to be a political offence;

(g) If the request falls under paragraph [2] of this article and the requested State Party considers, based on the information provided by the requesting State Party, [that there is no basis for the suspicion of the involvement of an organized criminal group in the offence] [that the suspicion is unreasonable] [87]

22. For the purpose of cooperation under this article, the offences established in articles [...] of this Convention shall not be considered fiscal [or customs] offences, without prejudice to the constitutional limitations and the fundamental domestic law of the States Parties.[88]

23. Reasons shall be given for any refusal of mutual legal assistance.

[24. If, within six months of the submission of its request, the requesting State Party has not received any information on action taken pursuant to that request, the requesting Party may petition the requested State Party in this regard. The requested Party shall inform the requesting Party about the reason for the lack of any communication regarding the request.][89]

25. Mutual legal assistance may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or proceeding.

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[85] Many delegations expressed the view that subparagraphs (c) and (d), contained in document A/AC.254/4/Rev.4, should be deleted.

[86] A number of delegations were of the view that subparagraphs (e) and (f), proposed by the delegation of the United States (A/AC.254/L.33), were already covered by the concept of "essential interests" in sub-paragraph (b). It was noted that the inclusion of these subparagraphs might imply that subparagraph (b) had a more limited scope than would otherwise be understood. Accordingly, a number of delegations considered that retaining these subparagraphs would require the inclusion of other express grounds for refusal, such as the possible imposition of the death penalty, double jeopardy and lapse of time.

[87] Subparagraph (g) was proposed by the delegation of Canada at the fifth session of the Ad Hoc Committee. It replaced subparagraph (e) as presented in document A/AC.254/4/Rev.4.

[88] At the fifth session of the Ad Hoc Committee, the delegations of Canada, Finland, the Netherlands and Switzerland undertook to submit a redrafted version of this paragraph.

[89] This paragraph was submitted by the delegation of France at the fifth session of the Ad Hoc Committee.

26. Before refusing a request pursuant to paragraph 21 of this article or postponing its execution pursuant to paragraph 25, the requested State Party shall consult with the requesting State Party to consider whether assistance may be granted subject to such terms and conditions as it deems necessary. If the requesting Party accepts assistance subject to those conditions, it shall comply with the conditions.

27. A witness, expert or other person who, at the request of the requesting State Party, consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting Party shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in that territory in respect of acts, omissions or convictions prior to his or her departure from the territory of the requested State Party. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days, or for any period agreed upon by the Parties, from the date on which he or she has been officially informed that his or her presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory of the requesting Party or, having left it, has returned of his or her own free will.

28. The authorities of the requested State Party may request to be present in proceedings conducted in the territory of the requesting State Party.[90]

29. The ordinary costs of executing a request shall be borne by the requested State Party, unless otherwise agreed by the Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne.[91]

30. The requested State Party:

(a) Shall provide copies of government records, documents or information in its possession that, under its laws, are available to the general public;

(b) May, at its discretion, provide in whole, in part or subject to such conditions as it deems appropriate, copies of any government records, documents or information in its possession that under its laws are not available to the general public.[92]

31. States Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to or enhance the provisions of this article.[93]

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[90] This paragraph was proposed by the delegation of Mexico. It was originally contained in document A/AC.254/L.44 and is presented here as further amended by the delegation of Mexico at the fifth session of the Ad Hoc Committee.

[91] One delegation noted that the wording of this paragraph required clarification. The delegation of Bangladesh suggested that the modalities for sharing ordinary costs of executing the request should be decided through mutual consultation between the requesting State Party and the requested State Party.

[92] This provision was redrafted following a preliminary discussion at the fifth session of the Ad Hoc Committee. It will require further examination.

[93] One delegation noted that the wording of this paragraph required clarification. Another delegation proposed that the paragraph be deleted.

Article 14 bis
Joint investigations[94]

On a reciprocal basis, States Parties shall consider concluding bilateral or multilateral agreements or understandings whereby, in relation to matters that are the subject of criminal proceedings in one or more States, the judicial authorities concerned may, where necessary together with police authorities, after informing the central authority or authorities referred to in paragraph 13 of article 14, act together within joint investigative bodies. In the absence of such agreements or understandings, such joint investigations may be undertaken by agreement on a case-by-case basis.

Article 15
Special investigative techniques

1. Each State Party shall, within its possibilities and under the conditions prescribed by its domestic law, take the necessary measures to allow for the appropriate use of special investigative techniques, in particular controlled delivery, electronic or other forms of surveillance, and undercover operations, [by its competent authorities in its territory] for the purpose of effectively combating organized crime.[95]

2. For the purpose of investigating the crimes [covered by this Convention] [established in articles [...] of this Convention], States Parties are encouraged to make, when necessary, appropriate bilateral or multilateral arrangements for using such special investigative techniques in the context of cooperation at the international level. Such arrangements shall be agreed upon and implemented in full compliance with the principle of sovereign equality of States and shall be carried out strictly in accordance with the agreed terms of those arrangements.[96]

3. Decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration

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[94] The placement of this paragraph in the present article, in connection with article 19, paragraph 2 (c), or in a separate article on joint investigative teams is to be considered. At the fifth session of the Ad Hoc Committee, the delegation of Italy undertook to consider the presentation of a possible reformulation of this paragraph at a subsequent session. The reformulation could include the following sentence: "The States Parties involved shall ensure that the sovereignty of the State Party in whose territory the investigation is to take place is fully respected."

[95] The text of this paragraph was proposed by an informal group convened at the request of the Chairman at the fifth session of the Ad Hoc Committee. One delegation noted that the proposal should be flexible, permit States to take the measures necessary for the use of such techniques and encourage States to implement them without placing them under an obligation to do so. One delegation was of the view that if this provision were to impose an obligation, the words "in particular" should be deleted, so that the obligation would not be left undefined or open-ended. Some delegations were of the view that the formulation could be more binding and/or compelling. One delegation suggested reverting to the original proposal (A/AC.254/4/Rev.4) and retaining the phrase "for the purpose of gathering evidence and taking legal action against persons involved".

At the second session of the Ad Hoc Committee, several delegations noted the need to define these concepts. It was also suggested by some delegations that, since the list of measures in this paragraph was not exhaustive and new investigative measures might be developed in response to the evolution of organized crime and of technology, the definitions might also be inserted into the *travaux préparatoires*.

[96] Proposal made at the fifth session of the Ad Hoc Committee by the delegations of China and Mexico, at the request of the Chairman, to consolidate paragraphs 2 and 2 *bis* previously contained in article 15 (A/AC.254/4/Rev.4).

Consideration should be given to eliminating specific references throughout the text to "sovereign equality", which duplicate the provision on this subject contained in article 2, paragraph 3, and apply generally to obligations under the Convention.

financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned.

4. Decisions to use controlled delivery at the international level may [, with the consent of the States Parties concerned,][97] include methods such as intercepting and allowing the goods to continue intact or removed or replaced in whole or in part.

Article 16
Transfer of proceedings

States Parties shall give consideration to the possibility of transferring to one another proceedings for the criminal prosecution of an offence established in article(s) [...] of [an offence covered by] this Convention in cases where such transfer is considered to be in the interests of the proper administration of justice, in particular in cases where more jurisdictions are involved, with a view to concentrating the prosecution.

Article 17
Establishment of criminal record

Each State Party may take such legislative or other measures as may be necessary to take into consideration, under such terms as and for the purpose that it deems appropriate, any previous conviction of an alleged offender in another country for the purpose of using such information in criminal proceedings relating to an offence covered by this Convention.

Article 17 bis
Criminalization of obstruction of justice

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the following conduct, when committed intentionally:[98]

(a) The use of physical force, threats, intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding[99] in relation to the commission of offences covered by this Convention;[100]

(b) The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences covered by this Convention. Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of public officials.

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[97] The words in brackets, used in the corresponding article in the 1988 Convention (art. 11, para. 3), had been inadvertently deleted from the text.

[98] At its eighth session, the Ad Hoc Committee decided that the question of whether to include at the end of this paragraph the words "and involving an organized criminal group" would remain under review, pending the consideration of article 2 of the Convention.

[99] The *travaux préparatoires* should indicate that the term "proceeding" is intended to cover all official governmental proceedings that may include the pre-trial stage of a case.

[100] The *travaux préparatoires* should indicate that it is not intended to cover cases where a person has the right not to give evidence and an undue advantage is provided for the exercise of that right.

Article 18
Protection of witnesses

1. Each State Party shall adopt appropriate measures within its means to provide effective protection from potential retaliation or intimidation for witnesses in its criminal proceedings who give testimony concerning the crimes covered by this Convention and, as appropriate, for their relatives and other persons close to them.

2. The measures envisaged in paragraph 1 of this article may include, among other things, without prejudice to the rights of the defendant, including the right to due process:

(a) Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them, and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons;

(b) Providing evidentiary rules to permit witness testimony to be given in a manner that ensures the safety of the witness, such as permitting testimony to be given through the use of communications technology such as video links or other adequate means.

3. States Parties shall consider entering into arrangements with other States for the relocation of persons described in paragraph 1 of this article.

4. The provisions of this article shall apply also to victims insofar as they are witnesses.

Article 18 bis[101]
Assistance to and protection of victims

1. States Parties shall take appropriate measures within their means to provide assistance and protection to victims of offences covered by this Convention, in particular in cases of threat of retaliation or intimidation.

2. States Parties shall establish appropriate procedures to provide access to compensation and restitution for victims of offences covered by this Convention.

3. States Parties shall, subject to their domestic laws, enable views and concerns of victims to be presented and considered at appropriate stages of the criminal proceedings against the offenders in a manner not prejudicial to the rights of the defence.

Article 18 ter
Measures to enhance cooperation with law enforcement authorities

1. States Parties shall take appropriate measures to encourage persons who participate or who have participated in organized criminal groups covered by this Convention:

(a) To supply information useful to competent authorities for investigative and evidentiary purposes on such matters as:

(i) The identity, nature, composition, structure, location or activities of organized criminal groups;

[101] The *travaux préparatoires* should indicate that, while the purpose of this article is to concentrate on the physical protection of victims, the Ad Hoc Committee was cognizant of the need for protection of the rights of individuals as accorded under applicable international law, also in the context of the provision of paragraph 1 of article 24 of the Convention.

(ii) Links, including international links, with other organized criminal groups;[102]

(iii) Offences that organized criminal groups have committed or may commit;

(b) To provide factual, concrete help to competent authorities that may contribute to depriving organized criminal groups of their resources or of the proceeds of crime.

2. Each State Party shall give consideration to providing for the possibility of, in appropriate cases, mitigating punishment[103] of an accused person who provides substantial cooperation in the investigation or prosecution of any of the offences covered by this Convention.

3. Each State Party shall give consideration to providing, in accordance with its fundamental legal principles, the possibility of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of [any of the offences established in articles [...] of this Convention] [an offence covered by this Convention].

4. Protection of such persons shall be as provided for in article 18 of this Convention.

5. Where a person referred to in paragraph 1 of this article can provide substantial cooperation to the competent authorities of another State, the States Parties concerned may consider entering into arrangements, in accordance with domestic law, concerning the potential provision by the other State of the treatment described in paragraphs 2 and 3 of this article.

Article 19
Law enforcement cooperation[104]

1. States Parties shall consider entering into bilateral and multilateral agreements or arrangements on direct cooperation between their law enforcement agencies and, where such agreements or arrangements already exist, amending them with a view to giving effect to this Convention. In the absence of such agreements or arrangements between the States Parties concerned, the Parties may consider this Convention as the basis for mutual law enforcement cooperation in respect of any offence covered by this Convention. Whenever appropriate, States Parties shall make full use of agreements or arrangements, including international or regional organizations, to enhance the cooperation between their law enforcement agencies.

2. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences established in article(s) [...] of this Convention [the offences covered by this Convention]. Each State Party shall, in particular, adopt effective measures:

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[102] At the eighth session of the Ad Hoc Committee, the delegation of Turkey reserved its position on the use of the term "organized criminal groups" until the finalization of article 2 *bis* of the draft Convention.

[103] The *travaux préparatoires* should indicate that this phrase might include not only prescribed but also de facto mitigation of punishment.

[104] This article, amended at the fifth session of the Ad Hoc Committee, would appear to cover the method relating to law enforcement cooperation referred to in the three draft protocols. It was suggested that it might not be necessary to have separate provisions on matters relating to law enforcement cooperation in each of the draft protocols.

(a) To enhance and, where necessary, to establish channels of communication between their competent authorities, agencies and services, including the designation, where appropriate, of [a central authority or authorities],[105] to facilitate the secure and rapid exchange of information concerning all aspects of the offences established in this Convention, including, if the States Parties concerned deem it appropriate, links with other criminal activities;[106]

(b) To cooperate with other States Parties in conducting inquiries, with respect to offences established in this Convention, concerning:

(i) The identity, whereabouts and activities of persons suspected of involvement in the offences established in this Convention;

(ii) The movement of proceeds or property derived from the commission of such offences;

(iii) The movement of instrumentalities[107] used or intended for use in the commission of such offences;[108]

(c) In appropriate cases and if not contrary to domestic law, to establish joint teams, taking into account the need to protect the security of persons and operations, in order to carry out the provisions of this paragraph. Officials of any State Party participating in such teams shall act as authorized by the appropriate[109] authorities of the Party in whose territory the operation is to take place; in all such cases, the States Parties involved shall ensure that the sovereignty of the Party in whose territory the operation is to take place is fully respected;[110]

(d) To provide, when appropriate, necessary items or quantities of substances for analytical or investigative purposes;

(e) To facilitate effective coordination between their competent agencies and services and to promote the exchange of personnel and other experts, including, subject to bilateral arrangements or agreements between the States Parties concerned, the posting of liaison officers;[111]

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[105] Many delegations were of the view that the reference to central authorities should be deleted or placed in brackets, as the concept more properly belonged under mutual legal assistance (art. 14). In this connection, it was noted that the provision of the 1988 Convention, on which article 19 was based, did not include a reference to central authorities. At the fifth session of the Ad Hoc Committee, the proposal to replace this phrase with "points of contact among such authorities, agencies and services" received widespread support. The delegation of Spain stated that the deletion of the reference to central authorities and its replacement with reference to the establishment of contact points needed further study by the Ad Hoc Committee.

[106] At the fifth session of the Ad Hoc Committee, the delegations of the Islamic Republic of Iran and Pakistan suggested either deleting the reference to "links with other criminal activities" or limiting the reference to "other organized criminal activities".

[107] At the fifth session of the Ad Hoc Committee, the delegation of the Syrian Arab Republic questioned the use of the term "instrumentalities" in this connection.

[108] At the fifth session of the Ad Hoc Committee, the delegations of the Comoros, Mali and Senegal questioned the accuracy of the French version of this paragraph.

[109] One delegation proposed the insertion of the word "central". Another delegation opposed it and noted the need to take into consideration the administrative structure of the State when deciding which authority should be charged with the responsibility referred to in the present paragraph.

[110] One delegation expressed concern regarding this paragraph. Some other delegations emphasized in this connection the importance of respecting the sovereignty and territorial integrity of States.

[111] One delegation suggested that the concept and role of "liaison officers" should be clarified. Another State proposed adding to the end of this paragraph the words "as well as, where appropriate, the extension and expansion of the competence of existing liaison officers".

(f) To exchange information with other States Parties on specific means and methods used by organized criminal groups, including, where applicable, routes and conveyances and the use of false identities, altered or false documents or other means of concealing their activities.

3. States Parties shall cooperate closely in preventing and controlling the offences established in article(s) [...] of this Convention [the offences covered by this Convention]. In particular, they shall, in accordance with their domestic laws or pursuant to bilateral or multilateral agreements or arrangements:[112]

(a) Take all appropriate measures to prevent preparation in their respective territories for the commission of those offences within or outside their territories;

(b) Exchange information in accordance with their national law and coordinate administrative and other measures taken as appropriate to prevent the commission of offences established in article(s) [...] of this Convention [of offences covered by this Convention].[113]

[4. States Parties shall:[114]

(a) Designate knowledgeable law enforcement personnel to be available [on a 24-hour basis][115] to respond to transnational organized crime committed through the use of computers, telecommunications networks and other forms of modern technology;[116] and

(b) Review their domestic legislation to ensure that such abuses are adequately addressed.][117]

Article 20
Collection and exchange of information on the nature of organized crime

1. States Parties shall consider developing and sharing analytical expertise concerning organized criminal activities with each other and through interregional and regional organizations, including the International Criminal Police Organization. For this purpose, common definitions, standards and methodologies should be developed and applied as appropriate.

2. Each State Party shall consider analysing, in consultation with the scientific and academic communities, trends in organized crime in its territory, the circumstances in which organized crime operates, as well as the professional groups and technologies involved.

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[112] Two delegations proposed that paragraph 3 be transferred to article 22 (Prevention).

[113] At the fifth session of the Ad Hoc Committee, discussion on this paragraph was deferred until article 22 could be considered.

At the second session of the Ad Hoc Committee, one delegation noted the need to ensure the confidentiality of any information exchanged on the basis of this subparagraph.

[114] Some delegations stressed the need for further consideration of this paragraph and one delegation proposed its deletion on the grounds that it would impose significant financial obligations on States Parties. It was suggested that the paragraph should be reformulated so that the measures envisaged would be discretionary.

[115] One delegation proposed the deletion of the words appearing in brackets.

[116] One delegation noted that these measures should also be considered in connection with other types of offences.

[117] At the fifth session of the Ad Hoc Committee, it was indicated that this paragraph required substantial reformulation.

3. Each State Party shall consider monitoring its policies and actual measures to combat organized crime and making assessments of their effectiveness and efficiency.

Article 21
Training and technical assistance

1. Each State Party shall, to the extent necessary, initiate, develop or improve a specific training programme for its law enforcement personnel, including prosecutors, investigating magistrates and customs personnel, and other personnel charged with the prevention and control of the offences covered by this Convention. Such programmes may include secondments and exchanges. Such programmes shall deal, in particular, with the following:

(a) Methods used in the prevention, detection and control of the offences covered by this Convention;

(b) Routes and techniques used by persons suspected of involvement in offences covered by this Convention, including in transit States, and appropriate countermeasures;

(c) Monitoring of import and export of contraband;

(d) Detection and monitoring of the movements of proceeds and property derived from offences covered by this Convention, instrumentalities used in the commission of such offences and methods used for the transfer, concealment or disguise of such proceeds, property and instrumentalities, and other methods used in combating money-laundering and other financial crimes;

(e) Collection of evidence;

(f) Control techniques in free trade zones and free ports;

(g) Modern law enforcement equipment and techniques, including electronic surveillance, controlled deliveries and undercover operations;

(h) Methods used in combating transnational organized crime committed through the use of computers, telecommunications networks or other forms of modern technology; and

(i) Methods used in the protection of victims and witnesses.

2. States Parties shall assist one another in planning and implementing research and training programmes designed to share expertise in the areas referred to in paragraph 1 of this article and, to this end, shall also, when appropriate, use regional and international conferences and seminars to promote cooperation and to stimulate discussion on problems of mutual concern, including the special problems and needs of transit States.

3. States Parties shall promote training and technical assistance that will facilitate extradition and mutual legal assistance. Such training and technical assistance may include language training, secondments and exchanges between personnel in central authorities or agencies with relevant responsibilities.

4. States Parties may conclude bilateral or multilateral agreements on material and logistical assistance, taking into consideration the financial arrangements necessary for the means of international cooperation provided for by the present Convention to be effective and for the prevention and control of transnational organized crime.

5. In the case of existing bilateral and multilateral agreements, States Parties shall strengthen, to the extent necessary, efforts to maximize operational and training activities

within interregional and regional organizations, including, *inter alia*, the International Criminal Police Organization, and within other relevant bilateral and multilateral agreements or arrangements.

Article 21 bis[118]
Other measures: implementation of the Convention through economic development and technical assistance

1. States Parties shall take measures conducive to the optimal implementation of this Convention to the extent possible, through international cooperation, taking into account the negative effects of organized crime on sustainable development.

2. States Parties shall make concrete efforts to the extent of their capacities and in coordination with the international agencies:

(a) To enhance their cooperation at various levels with developing countries, with a view to strengthening the capacity of the latter to combat, eradicate and prevent transnational organized crime;

(b) To provide more constructive opportunities for the sustainable economic development of developing countries. This will require financial and material assistance to prepare developing countries to fight transnational organized crime effectively and to help them implement the Convention successfully;

(c) To establish a special United Nations fund for technical cooperation in order to provide technical assistance to developing countries and countries with economies in transition to assist them in meeting their needs for the implementation of this Convention. States Parties shall endeavour to make adequate and regular voluntary contributions to the fund. States Parties shall also consider, in accordance with their domestic legislation and the provisions of this Convention, contributing to the fund a percentage of the money or of the corresponding value of illicit assets confiscated in accordance with the provisions of this Convention;

(d) To encourage and persuade other States Parties and financial institutions to join them in the transfer of technology and increased technical cooperation by providing more training programmes and modern equipment to developing countries in order to assist them in achieving the objectives of this Convention.

3. These measures shall be without prejudice to existing foreign investment commitments or to other financial cooperation arrangements at the bilateral, regional or international level.

Article 22
Prevention

1. States Parties shall endeavour to develop and evaluate national projects and to establish and promote best practices and policies aimed at the prevention of transnational organized crime.

[118] The text of this article was presented at the sixth session of the Ad Hoc Committee by the delegation of India on behalf of the Group of 77 (A/AC.254/L.108). During the preliminary discussion that ensued, there was support for many of the principles embodied in the article. Several proposals were made regarding the best way of articulating those principles, including considering the matter in connection with articles 21 and 23.

2. States Parties shall endeavour, in accordance with their constitutional principles, to reduce existing or future opportunities for organized criminal groups to participate in legal markets while acquiring proceeds of criminal offences covered by this Convention, through appropriate legislative, administrative or other measures. These measures should focus on:

(a) The strengthening of cooperation between law enforcement agencies or public prosecutors and relevant private entities, including industry;

(b) The promotion of the development of standards and procedures designed to safeguard the integrity of public and relevant private entities, as well as codes of conduct for relevant professions, in particular lawyers, notaries public, tax consultants and accountants;

(c) The prevention of the misuse by organized criminal groups of tender procedures conducted by public authorities and of subsidies and licences granted by public authorities for commercial activity;

(d) The prevention of the misuse of legal persons by organized criminal groups; such measures could include:

(i) The establishment of public records on legal persons and natural persons involved in the establishment, management and funding of legal persons;

(ii) The introduction of the possibility to disqualify by court order or any appropriate means for a reasonable period of time persons convicted of criminal offences covered by this Convention from acting as directors of legal persons incorporated in their jurisdiction;

(iii) The establishment of national records of persons disqualified from acting as directors of legal persons; and

(iv) The exchange of information contained in the records referred to in subparagraphs (d) (i) and (iii) of this paragraph with competent authorities of other States Parties.

3. States Parties shall endeavour to promote the reintegration into society of persons convicted of criminal offences covered by this Convention.

4. Each State Party shall endeavour to evaluate periodically existing relevant legal instruments and administrative practices with a view to detecting their vulnerability to abuse by organized criminal groups.

5. States Parties shall endeavour to promote public awareness regarding the existence, causes and gravity of and the threat posed by transnational organized crime. Information may be disseminated where appropriate through the mass media and shall include measures to promote public participation in preventing and combating such crime.

6. Each State Party shall inform the Secretary-General of the name and address of the authority or authorities[119] that can assist other States Parties in developing measures to prevent transnational organized crime.

7. States Parties shall, as appropriate, collaborate with each other and relevant international organizations in promoting and developing the measures referred to in this

[119] At the sixth session of the Ad Hoc Committee, the delegation of Spain suggested that reference should be to a central authority or authorities.

article, including by participating in international projects aimed at the prevention of transnational organized crime.[120]

[*Article 22 bis was deleted.*]

Article 22 ter
Communication from States Parties

Each State Party shall provide the Conference of the Parties to the Convention with information on its policies and legislative and administrative measures to implement the Convention, as required by the Conference of the Parties.[121]

Article 23
Conference of the Parties to the Convention

1. A Conference of the Parties to the Convention is hereby established to improve the capacity of States Parties to combat transnational organized crime and to promote and monitor the implementation of the Convention.

2. The Conference of the Parties shall convene not later than one year following the entry into force of the Convention. The first task of the Conference will be to agree upon and adopt rules of procedure and rules governing the activities described in paragraphs 3 and 4 of this article (including rules concerning payment of expenses incurred in carrying out those activities).

3. The Conference of the Parties shall agree upon mechanisms for accomplishing the objectives mentioned in paragraph 1 of this article, including:[122]

(a) Facilitating activities by States Parties under articles 21 and 22 of this Convention, including by mobilizing voluntary contributions;

(b) Facilitating the exchange of information among States Parties on patterns and trends in transnational organized crime and on successful practices for combating it;

(c) Cooperating with relevant international and non-governmental organizations;

(d) Examining periodically the implementation of the Convention by States Parties;

(e) Making recommendations to improve the Convention and its implementation.

[*Subparagraph (f) was deleted.*]

[120] At the sixth session of the Ad Hoc Committee, the delegation of Colombia proposed that the following sentence be added at the end of paragraph 7: "They shall also, as far as their means allow, allocate resources for the alleviation of the circumstances that render socially marginalized groups vulnerable to the action of transnational organized crime."

[121] The *travaux préparatoires* should show that the Conference of the Parties should take into account the need to foresee some regularity in the provision of the information.

[122] The delegation of Japan expressed concern about the confidentiality of some information foreseen under this paragraph and proposed inserting the following words: "taking into account the need for confidentiality of some information arising from the nature of the fight against transnational organized crime". Other delegations were of the view that issues such as this could be left to the Conference of the Parties, as they were too detailed to be dealt with in the Convention.

4. For the purpose of paragraphs 3 (d) and (e) of this article, the Conference of the Parties shall acquire the necessary knowledge of the measures taken by States Parties in implementing this Convention and the difficulties encountered by them in doing so through the information provided by the States Parties and through the promotion of, *inter alia*, [meetings between national authorities[123] and expert consultative teams] [to be established][124] in accordance with the rules established by the Conference pursuant to paragraph 2 of this article.[125, 126]

[*Article 23 bis*
Secretariat[127]

1. The Secretary-General shall convene the first session of the Conference of the Parties to the Convention and shall designate the Centre for International Crime Prevention of the Secretariat of the United Nations to serve as the secretariat for and at the direction of the Conference.

2. The secretariat shall:

(a) Assist the Conference of the Parties in carrying out the activities described in article 23 of this Convention and make arrangements for and provide the necessary services for the sessions of the Conference;

(b) Upon request, assist States Parties in providing information to the Conference of the Parties as envisaged in article 22 *ter* of this Convention; and

(c) Ensure the necessary coordination with the secretariats of other relevant international organizations.][128]

Article 23 ter
Implementation of the Convention

1. Each State Party shall take the necessary measures, including legislative and administrative measures, in accordance with the fundamental principles of its domestic legal system, to ensure the implementation of its obligations under this Convention.[129]

2. Each State Party may adopt more strict or severe measures than those provided for by this Convention for the prevention and combat of transnational organized crime.

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[123] The delegation of Spain proposed that reference be made to central national authorities.

[124] Proposal made by the delegation of the Islamic Republic of Iran in an effort to achieve consensus.

[125] During the discussions in the working group, concerns were expressed about how the Conference of the Parties would actually function. It was, therefore, deemed appropriate to begin identifying issues that would be covered by the rules that the Conference would agree upon and adopt in accordance with paragraph 2.

[126] This article requires further consideration.

[127] This article envisages the tasks of the secretariat in relation to the work of the Conference of the Parties. After the Ad Hoc Committee has discussed the question of technical assistance, it will be necessary to consider whether language addressing the role of the secretariat in relation to such assistance needs to be added to this article.

[128] The formulation of this article requires further consideration.

[129] The formulation of this paragraph and in particular the provision concerning the "fundamental principles of its domestic legal system", requires further consideration, including also in order to ensure consistency with other articles of the Convention where such a provision is made and where the intent is the same.

Article 24
Relation with other conventions

1. This Convention does not affect the rights and undertakings derived from international multilateral conventions concerning [special matters].[130]

2. States Parties to the Convention may conclude bilateral or multilateral agreements with one another on the matters dealt with in this Convention, for purposes of supplementing or strengthening its provisions or facilitating the application of the principles embodied in it.

3. If two or more Parties have already concluded an agreement or treaty in respect of a subject that is dealt with in this Convention or otherwise have established their relations in respect to that subject, they shall be entitled to apply that agreement or treaty or to regulate those relations accordingly, in lieu of the present Convention, [if it facilitates international cooperation].[131]

4. States Parties may conclude bilateral or multilateral agreements or arrangements for the application of one or more provisions of this Convention to other forms of criminal behaviour.

[5. No provision of this Convention shall be construed as preventing the States Parties from engaging in mutual cooperation within the framework of other international agreements, whether bilateral or multilateral, currently in force or concluded in the future, or pursuant to any other applicable arrangement or practice.][132]

Article 25
Settlement of disputes[133]

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention and its Protocols that cannot be settled through negotiation within a reasonable time [ninety days] shall, at the request of one of those Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State Party may, at the time of [signature,] ratification [, acceptance] or [approval] of this Convention, declare that it does not consider itself bound by paragraph 1

[130] Delegations considered that this term was vague and should be replaced with a more appropriate one.

[131] At the sixth session of the Ad Hoc Committee, many delegations felt that this phrase implied a value judgement, but that the text was silent as to who should make that judgement. It was therefore proposed that a better formulation be found.

[132] This paragraph appeared as option 3 of article 24 in the text contained in document A/AC.254/4/Rev.5. It was retained at the request of the delegation of the United States for further consideration. The delegation of Japan requested that the text of option 1 of article 24 of the text contained in document A/AC.254/4/Rev.5 also be retained. Option 1 provided as follows: "This Convention shall not prejudice the application of other United Nations conventions on criminal matters."

[133] Some delegations proposed that article 32 of the 1988 Convention would be a more appropriate model for this paragraph, in that it referred not simply to negotiation and arbitration, but in greater detail to "negotiation, enquiry, mediation, conciliation, arbitration, recourse to regional bodies, judicial process or other peaceful means of their [the Parties'] own choice". Other delegations, however, essentially supported the present formulation, since it was based on the International Convention for the Suppression of Terrorist Bombings of 1997, which was more recent than the 1988 Convention.

of this article. The other States Parties shall not be bound by paragraph 1 of this article with respect to any State Party that has made such a reservation.[134]

3. Any State Party that has made a reservation[135] in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.[136]

Article 26
Signature, ratification, acceptance, approval, accession and reservations

1. This Convention shall be open to all States for signature from [...] to [...] and thereafter at United Nations Headquarters in New York until [...].

2. The present Convention is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations.

Option 1

[3. No reservations may be made in respect of any provision of this Convention.]

Option 2

[3. Reservations shall be subject to the provisions of the Vienna Convention on the Law of Treaties of 1969.][137]

[4. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States Parties at the time of ratification, acceptance, approval or accession.]

[5. Reservations may be withdrawn at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall then inform all States. Such notification shall take effect on the date on which it is received by the Secretary-General.]

6. This Convention is subject to accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

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[134] One delegation noted that the issue of a declaration would apply only to cases involving the compulsory settlement of disputes. Some delegations proposed that paragraphs 2 and 3 of article 25, together with the appropriate paragraphs from article 26, should be placed in a separate article on reservations. Other delegations, however, noted that reservations in respect of the resolution of conflicts were an issue that should be kept in article 25, separate from the issue of reservations in general.

[135] One delegation proposed that the word "reservation" be replaced with the word "declaration".

[136] At its sixth session, on the recommendation of the Chairman, the Ad Hoc Committee requested the Secretariat to propose a formulation for this article that would be consistent with the wording of other United Nations conventions.

[137] At the sixth session of the Ad Hoc Committee, there was discussion as to whether reservations would be permitted. It was agreed that the issue of reservations could not be settled until the contents of the Convention had been decided upon. The Ad Hoc Committee agreed to place the two options in the text in order to facilitate further consideration of this issue. Some delegations proposed that the possibility of a third option, according to which reservations would not be permitted for certain articles of the Convention, should be kept in mind. In the text of the draft Convention contained in document A/AC.254/4/Rev.5, a provision that was relevant to this possible option was included as paragraph 4, namely: "A reservation incompatible with the object and purpose of the present Convention shall not be permitted."

[*Article 26 bis*
Relation with Protocols[138]

1. This Convention may be supplemented by one or more Protocols.

2. In order to become a Party to a Protocol, a State must also be a Party to the Convention.

3. A State Party to the Convention is not bound by a Protocol unless it becomes a Party to the Protocol in accordance with the provisions thereof.

4. Any Protocol by which a State Party is bound shall, for that State Party, form an integral part of this Convention.]

Article 27
Entry into force

1. The present Convention shall enter into force on the thirtieth day following the date of deposit with the Secretary-General of the United Nations of the [...][139] instrument of ratification, acceptance, approval or accession.

2. For each State Party ratifying, accepting, approving or acceding to the Convention after the deposit of the [...] instrument of such action, the Convention shall enter into force on the thirtieth day after the deposit by such State of that relevant instrument.

Article 28[140]
Amendment

1. A State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties.

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[138] At the sixth session of the Ad Hoc Committee there was considerable discussion regarding whether a provision governing the relationship between the Convention and the Protocols should be included in the text of the Convention or only in the text of each of the Protocols. The Ad Hoc Committee was of the view that decisions on this matter and on the formulation of the text would be made once the substantive provisions of the Convention and the Protocols had been finalized. The Ad Hoc Committee requested the Secretariat to provide it with clauses dealing with the same subject in other international instruments.

[139] Some delegations proposed 20 as the appropriate number of ratifications, since this would make it possible for the Convention to enter into force in a relatively brief period. Other delegations proposed that the number of ratifications required should be higher (for example, 40-60) in order to emphasize the global nature of the Convention. One delegation noted that a low number of ratifications would be appropriate should it be possible to make reservations to the Convention.

[140] This article should be amended to be brought in line with article 23.

3. When an amendment enters into force, it shall be binding on those States Parties which have accepted it, other States Parties still being bound by the provisions of the present Convention and any earlier amendments that they have accepted.

Article 29
Denunciation

A State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

Article 30
Languages and depositary

1. The Secretary-General of the United Nations is designated depositary of the present Convention.

2. The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.[141]

IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.

[141] At its sixth session, the Ad Hoc Committee requested the Secretariat to propose language for articles 28-30 that would be in line with standard treaty practice.

Attachment

1. At its second session, the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime accepted a compromise proposal by its Chairman that a list of offences, which could be either indicative or exhaustive, could be included either in an annex to the Convention or in the *travaux préparatoires*. This list would, however, need to be supplemented with proposals from States. (For details see the report of the Ad Hoc Committee on its second session (A/AC.254/11).)

2. The following list was taken from former paragraph 3 of article 2 (see A/AC.254/4/Rev.1):

"[3. For the purposes of the application of paragraph 1 above, 'serious crime' shall be deemed to include, among others, acts such as the following:

"(a) Illicit traffic in narcotic drugs or psychotropic substances and money-laundering, as defined in the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988;[a]

"(b) Traffic in persons, as defined in the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others of 1949;[b]

"(c) Counterfeiting currency, as defined in the International Convention for the Suppression of Counterfeiting Currency of 1929;[c]

"(d) Illicit traffic in or stealing of cultural objects, as defined by the United Nations Educational, Scientific and Cultural Organization Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property of 1970,[d] and the International Institute for the Unification of Private Law Convention on Stolen or Illegally Exported Cultural Objects of 1995;

"(e) Stealing of nuclear material, its misuse or threats to misuse or harm the public, as defined by the Convention on the Physical Protection of Nuclear Material of 1980;[e]

"(f) Acts contained in the United Nations conventions against terrorism;[f]

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[a] *Official Records of the United Nations Conference for the Adoption of a Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Vienna, 25-November-20 December*, 1988, vol. I (United Nations publication, Sales No. E.94.XI.5).

[b] Resolution 317 (IV), annex. The delegation of the Philippines proposed that the definition be expanded, as the 1949 Convention did not address new contemporary forms of trafficking. That delegation proposed that the definition of "traffic in persons" be elaborated upon and made clearer, using the international standards formulated in the Slavery Convention signed at Geneva on 25 September 1926 (United Nations, *Treaty Series*, vol. 212, No. 2861) and the 1953 Protocol amending the Slavery Convention (United Nations, *Treaty Series*, vol. 182, No. 2422) and the Platform for Action of the Fourth World Conference on Women (*Report of the Fourth World Conference on Women, Beijing, 4-15 September 1995* (United Nations publication, Sales No. E.96.IV.13), resolution 1, annex II).

[c] *League of Nations Treaty Series*, vol. 112, p. 171.

[d] United Nations, *Treaty Series*, vol. 823, No. 11806.

[e] Ibid., vol. 1456, No. 24631.

[f] Some delegations proposed that reference be made to the Arab Convention on Combating Terrorism of 1998. Some delegations were of the view that the Convention, while not intended as an instrument against terrorism, should endeavour to cover the emerging links between terrorist acts and organized crime.

"(g) Illicit manufacture of and traffic in firearms, their parts and components, ammunition, or explosive materials or devices;[g]

"(h) Illicit traffic in or stealing of motor vehicles, their parts and components; and

"(i) Corruption of public officials and officials of private institutions.[h]]"

3. The following list was circulated at the second session of the Ad Hoc Committee by Mexico on behalf of several delegations:

(a) Illicit traffic in narcotic drugs and psychotropic substances;

(b) Money-laundering;

(c) Traffic in persons, in particular women and children;

(d) Illicit traffic in and transport of migrants;

(e) Counterfeiting currency;

(f) Illicit traffic in or stealing of cultural objects;

(g) Illicit traffic in or stealing of nuclear material, its use or threatening to misuse it;

(h) Acts of terrorism;

(i) Illicit manufacturing of and trafficking in firearms, ammunition, explosives and other related material;

(j) Illicit traffic in or stealing of motor vehicles, their parts and components;

(k) Acts of corruption;

(l) Illicit traffic in human organs;

(m) Illicit access to or illicit use of computer systems and electronic equipment, including electronic transfer of funds;

(n) Kidnapping;

(o) Illicit traffic in or stealing of biological and genetic materials.

4. The following list was proposed by the Government of Egypt:

(a) Illicit traffic in narcotic drugs and psychotropic substances and money-laundering;

(b) Traffic in persons, in particular women and children;

(c) Illicit traffic in and transport of migrants;

(d) Counterfeiting currency;

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[g] One delegation proposed that the definition in the Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and Other Related Materials (A/53/78, annex) should be used.

[h] Individual delegations proposed the inclusion of illicit traffic in women and children under subparagraph 3 (b), as well as the inclusion of the following as additional subparagraphs: illicit traffic in migrants; illicit traffic in endangered animals; illicit traffic in human body parts; illicit access to computer systems and equipment; piracy; kidnapping for ransom; and murder and other grave offences against persons.

(e) Illicit traffic in or stealing of cultural objects;

(f) Illicit traffic in or stealing of nuclear material, its use or threatening to misuse it;

(g) Acts of terrorism as defined in the pertinent international conventions;

(h) Illicit manufacturing of and trafficking in firearms, ammunition, explosives and other related material;

(i) Illicit traffic in or stealing of motor vehicles, their parts and components;

(j) Acts of corruption;

(k) Illicit traffic in human body organs;

(l) Illicit access to or illicit use of computer systems and electronic equipment, including electronic transfer of funds;

(m) Illicit traffic in or stealing of biological and genetic materials.